

DISCUSSION DRAFT H.R. ___, TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO RECOVER THE COST OF PROCESSING ADMINISTRATIVE PROTESTS FOR OIL AND GAS LEASE SALES, APPLICATIONS FOR PERMITS TO DRILL, AND RIGHT OF WAY APPLICATIONS, AND FOR OTHER PURPOSES; DISCUSSION DRAFT H.R. ___, TO CLARIFY THE CATEGORICAL EXCLUSIONS AUTHORIZED BY THE ENERGY POLICY ACT OF 2005 AND AUTHORIZE ADDITIONAL CATEGORICAL EXCLUSIONS TO STREAMLINE THE OIL AND GAS PERMITTING PROCESS, AND FOR OTHER PURPOSES; DISCUSSION DRAFT H.R. ___, TO AMEND THE MINERAL LEASING ACT TO AUTHORIZE NOTIFICATIONS OF PERMIT TO DRILL, AND FOR OTHER PURPOSES; AND DISCUSSION DRAFT H.R. ___, TO CLARIFY THAT BUREAU OF LAND MANAGEMENT SHALL NOT REQUIRE PERMITS FOR OIL AND GAS ACTIVITIES CONDUCTED ON NON-FEDERAL SURFACE ESTATE TO ACCESS SUBSURFACE MINERAL ESTATE THAT IS LESS THAN 50 PERCENT FEDERALLY OWNED, AND FOR OTHER PURPOSES

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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FEDERALLY OWNED, AND FOR OTHER PURPOSES**

**Wednesday, June 6, 2018
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:06 p.m., in room 1324, Longworth House Office Building, Hon. Paul Gosar [Chairman of the Subcommittee] presiding.

Present: Representatives Gosar, Lamborn, Pearce, Cheney, Gianforte, Curtis; Lowenthal, Grijalva, Beyer, and Soto.

Also present: Representative Luján.

Dr. GOSAR. The Subcommittee on Energy and Mineral Resources will come to order. The Subcommittee is meeting today to hear testimony on four discussion drafts related to onshore oil and gas energy development.

With unanimous consent, Mr. Luján will sit and participate through the duration of the hearing.

Without objection, so ordered.

Under Committee Rule 4(f), oral opening statements at the hearings are limited to the Chairman, the Ranking Minority Member, and the Vice Chair. This will allow us to hear from our witnesses sooner and help Members keep to their schedules. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

Without objection, so ordered.

I now recognize myself for a 5-minute opening statement.

**STATEMENT OF HON. PAUL A. GOSAR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. Last month, my colleagues across the aisle and across the dome held a press conference at a gas station here on Capitol Hill to call attention to the recent rise in gas prices. A follow-up letter was also sent, calling on President Trump to engage with OPEC and leaders from other oil-producing nations, including Russia's Vladimir Putin, to increase world oil production to remedy higher prices at the pump.

I actually agree with Senator Schumer on one point: increasing oil supply would benefit hardworking Americans who need low gas prices to get to work and make ends meet. But I would argue that relying on Russia, Iran, and Venezuela to meet our energy needs at home is not in the national interest, nor in the environmental interests of the world. We can lower gas prices and we can do it responsibly by increasing domestic oil production on Federal and non-Federal lands here in the United States.

Today, the Subcommittee will consider four bills that will streamline the oil and gas permitting and leasing process on our Federal lands, and do so in an environmentally sound manner. Embracing policies that enhance our energy dominance will strengthen our national and economic security, create well-paying jobs, and more importantly, lower gas prices for our constituents.

The first bill, sponsored by Representative Pearce, would clarify language in the Energy Policy Act of 2005, also known as EAct 05, to expand the use of categorical exclusions in approving permits and right-of-ways that will have minimal environmental impacts. Although EAct 05 authorized five categorical exclusions for oil and gas, the previous administration chose not to use them, even when a drilling permit clearly qualified for an exclusion under the law.

This bill would require the Bureau of Land Management to use categorical exclusions whenever they are applicable, and updates the exclusions to reflect advances in drilling technology. This minor update removes unnecessary bureaucratic hurdles, allowing the BLM to focus more effort on those drilling proposals that require rigorous environmental assessments.

The second bill, also sponsored by Representative Pearce, prohibits the BLM from requiring permits for oil and gas drilling activities on private or state-owned surface, unless the Federal Government owns over 50 percent of the mineral estate impacted by such activities. Under the previous administration, the BLM required operators to obtain Federal drilling permits for surface impacting operations that occurred on state and private land, causing significant delays and uncertainty in the permitting process. These requirements discourage energy development on non-Federal lands, imposing unnecessary costs on private landowners and the states without providing additional environmental benefits.

The third bill, sponsored by Representative Curtis, would authorize an expedited oil and gas permitting process for certain drilling operations. For oil and gas operations with little or no environmental impact, operators can submit a Notification for Permit to Drill, or NPD, instead of going through the existing Application for Permit to Drill, or APD, process. The bill will allow operators to

proceed with the drilling activities described in the NPD without further approval from the BLM, so long as the BLM does not issue objections within 45 days. Because permits for low-impact drilling operations will move more quickly through the process, BLM will be able to utilize its limited resources to prioritize evaluating and approving drilling activities with a larger environmental footprint.

The final bill would authorize DOI to recover the cost of processing protests on lease sales. Currently, funds used to process protests on oil and gas lease sales are drawn from DOI's budget. Some of these protests are 1,000 to 1,500 pages in length, and take months to process. Under this bill, DOI will be authorized to assess a fee on each protest submitted to aid in recovering the cost of processing such protests.

Today, we will hear from witnesses representing two energy-producing states that will be directly impacted by these legislative proposals. These witnesses will provide valuable insight regarding whether and how these proposals will streamline the permitting and leasing process managed by the BLM in their states.

We will also discuss the impact of oil and gas production on job creation and how inefficiencies in the permitting and leasing process impact local economies.

[The prepared statement of Dr. Gosar follows:]

PREPARED STATEMENT OF THE HON. PAUL A. GOSAR, CHAIRMAN, SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

Last month, my colleagues across the aisle and across the dome held a press conference at a gas station here on Capitol Hill to call attention to the recent rise in gas prices. A follow-up letter was also sent, calling on President Trump to engage with OPEC and leaders of other oil producing nations, including Russia's Vladimir Putin, to increase world oil production to remedy higher prices at the pump. Well, I actually agree with Senator Schumer on one point—increasing oil supply would benefit hardworking Americans who need low gas prices to get to work and make ends meet. But I would argue that relying on Russia, Iran and Venezuela to meet our energy needs at home is not in the national interest—nor in the environmental interests of the world. We can lower gas prices and we can do it responsibly by increasing domestic oil production on Federal and non-Federal lands here in the United States.

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The third bill, sponsored by Representative Curtis, would authorize an expedited oil and gas permitting process for certain drilling operations. For oil and gas operations with little or no environmental impact, operators can submit a "Notification for Permit to Drill" or "NPD" instead of going through the existing Application for Permit to Drill or "APD" process. The bill would allow operators to proceed with the drilling activities described in the NPD without further approval from the BLM, so long as BLM does not issue objections within 45 days. Because permits for low impact drilling operations will move more quickly through the process, BLM will be able to utilize its limited resources to prioritize evaluating and approving drilling activities with a larger environmental footprint.

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Dr. GOSAR. I recognize the gentleman to my left, the Ranking Member, Mr. Lowenthal, for his 5 minutes.

STATEMENT OF THE HON. ALAN S. LOWENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. LOWENTHAL. Thank you, Mr. Chairman, and thank you to the witnesses for being here today.

I have concerns with all four of the draft bills we are discussing today. My biggest concern is a common theme that runs through all of them, and through this Administration's approach to oil and gas on public lands.

Simply put, that theme is: let the industry do whatever it wants and keep the public in the dark. It appears to be a guiding principle of this Administration: government exists for the benefit of the wealthy and the well-connected, while everyday Americans are inconveniences that need to be silenced or ignored.

Nothing demonstrates that better than the constant attacks on the National Environmental Policy Act, also known as NEPA. I will bet most people in the country have never heard of NEPA. But NEPA is often the only reason that people hear about anything else.

One of the foundational principles of NEPA is involving the public in government decisions. People should be told what the government intends to do in their communities, in their neighborhoods, and in their backyards. And people should not just be informed of decisions that have already been made, they should have a voice in the process. But that ability is under attack.

Earlier this year, the Bureau of Land Management reversed a 7-year-old policy and made it completely optional to involve the public in the review of proposed oil and gas leases. The BLM also shortened the time available to protest leases, from 30 days to just 10. Although maybe that is helpful, given that one of today's bills would create a per-page fee for filing a protest. With only 10 days to write one, chances are that it is going to be shorter and cheaper.

Meanwhile, these bills would also mandate the broad use of categorical exclusions for drilling permits—again, shutting the public out of the process.

The problem with this approach isn't limited just to the clear effort to make sure that the public sees, hears, and speaks no evil when it comes to oil drilling. This is an attack on the environment, as well.

The Government Accountability Office and others have shown that the widespread use of categorical exclusions leads to piecemeal development that creates far more surface disturbance than necessary. These bills are effectively providing an incentive for oil and gas companies to do more damage to our public lands.

As with so many of the Republican energy bills in this Committee, the underlying premise behind them is entirely false. Despite the repeated claims by the Majority, oil production on Federal lands is robust, and that is not because of President Trump. Onshore oil production on Federal lands went up 78 percent under President Obama. Companies hold over 14 million acres of oil and gas leases that aren't producing oil or gas. They have also stockpiled nearly 8,000 drilling permits that they are not using.

There are fewer pending drilling permits now than at any time in the past decade. And, according to the most recent data put out by the Bureau of Land Management with their new computer system, they are able to process permits in only 50 days.

Waiving environmental laws and shutting the public out simply to allow companies to drill faster is unnecessary and, more importantly, it is wrong.

The Trump administration is relentlessly trying to remove anything that might be a burden to the oil and gas industry. But informing people of what is happening in their backyard is not a burden. Giving people a voice is not a burden. And responsible, balanced management of public lands is not a burden.

Unfortunately, these bills don't reflect that, and I believe they should be sent back to the drawing board.

Again, I thank the witnesses for being here, and I yield back the balance of my time.

[The prepared statement of Dr. Lowenthal follows:]

PREPARED STATEMENT OF THE HON. ALAN S. LOWENTHAL, RANKING MEMBER,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Thank you, Mr. Chairman, and thank you to the witnesses for being here.

I have serious concerns with the four draft bills that we are discussing today. The biggest concern is a common theme that runs through all of them, and through this Administration's approach to oil and gas on public lands.

Simply put, that theme is: let the industry do what it wants, and keep the public in the dark. It appears to be the guiding principle of this Administration: government exists for the benefit of the wealthy and the well-connected, while every-day Americans are inconveniences that need to be silenced or ignored.

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And, as with so many Republican energy bills in this Committee, the underlying premise behind them is entirely false. Despite the repeated claims by the Majority, oil production on Federal lands is robust. And it's not because of President Trump.

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Dr. GOSAR. I thank the gentleman. I now want to recognize our panel.

First of all, we have the Honorable Susana Martinez, the Governor of the State of New Mexico—welcome; the Honorable Ken McQueen, Secretary, Energy, Minerals and Natural Resources Department, State of New Mexico—thank you; Mr. Dennis Willis, private citizen from Price, Utah—thanks for coming; Mr. John Baza, Director, Utah Division of Oil, Gas and Mining, Salt Lake City, Utah—welcome; and Ms. Katharine MacGregor, Deputy Assistant Secretary for Land and Minerals Management, Department of the Interior, right here in Washington, DC.

Welcome back, Katie.

Let me remind the witnesses that under our Committee Rules they must limit their oral statements to 5 minutes. But their entire statement will be appearing in the hearing record.

Our microphones are not automatic, so you are going to see a light system. For the first 4 minutes it will be green, then it will turn to yellow. That gives you about a minute. When you see the red, please try to summarize because we want to get to questions.

With that, I would like to recognize Governor Martinez for your 5 minutes.

**STATEMENT OF THE HON. SUSANA MARTINEZ, GOVERNOR,
STATE OF NEW MEXICO, SANTA FE, NEW MEXICO**

Governor MARTINEZ. Thank you, Chairman Gosar, Ranking Member Lowenthal, and Subcommittee members. Thank you for the opportunity to speak with you today on an issue that is of incredible importance and urgency to the state of New Mexico, western states, and to the Federal Government.

Today alone, my state will lose out on approximately \$2 million in tax revenue due to a backlog of applications for permit to drill by the Bureau of Land Management in just our state. This same delay in application approvals will cost the Federal Government another \$3.5 million in revenues, again, in a single day.

But these applications are not just waiting a single day to be approved. The average approval time for BLM permits in New Mexico is 250 days, compared to just 10 days for the New Mexico Energy, Minerals and Natural Resources Department to approve those same permits. This has created a backlog of more than 800 BLM applications.

Over the course of a year, these delays add up to a \$713 million loss of revenue for the state of New Mexico and a \$1.3 billion loss for the Federal Government, with those amounts increasing daily.

I know that many other states are facing similar delays. If the Federal Government is losing \$1.3 billion per year from New Mexico alone, it should concern all of us to think what the national loss in revenue must be.

A large share of our state's oil and gas royalties support our public school system in New Mexico. At a time when we are fighting to turn around struggling schools and ensure that our school campuses are safe and they are secure, we should not be letting a single dollar slip away.

It is not just education. Revenue from oil and gas activity helps to fund all of our state's vital services, like law enforcement, health and human service programs, emergency management, and infrastructure construction.

In addition to impacting important services, delays in the approval of permits also affect job growth and rural economic development. Oil and gas activity contributes more than \$11.3 billion to New Mexico's economy, and is responsible for more than 100,000 jobs. Keep in mind, the population in New Mexico is 2.1 million people.

Each backlogged permit represents New Mexicans losing out on good-paying jobs and rural communities losing out on economic growth. We need a solution that will streamline layers of bureaucratic requirements and expedite the approval process.

Five of my western governors, my peers, and I have presented four proposals to the Department of the Interior that would ensure the timelier handling of regular, run-of-the-mill applications for drilling permits. The draft legislation before the Committee today contains many of the same principles as our proposals, with one common objective: cut the duplicative and bureaucratic Federal red tape that is hampering energy production across the West.

When I took office in 2011, I inherited a \$450 million budget deficit, nearly 9 percent of my \$5.2 billion budget. We have made great progress since then. Our tax revenues are rising rapidly,

New Mexico's economy is expanding and diversifying, and we have taken critical steps to protect the long-term stability of our state budget while amassing an \$800 million budget surplus without increasing a single tax on our people or small businesses.

We have cut unnecessary government red tape and improved efficiencies. We have expanded production in New Mexico, while at the same time cracking down on polluters and levying more fines than any prior administration did. And we are implementing our all-of-the-above energy plan to aggressively develop all sources of energy in New Mexico.

These four bills offer you an opportunity to improve Federal processes in a way that will make a measurable difference for all New Mexicans and millions of people across the western United States and the rest of our country.

I thank you for your time and your consideration.

[The prepared statement of Governor Martinez follows:]

PREPARED STATEMENT OF SUSANA MARTINEZ, GOVERNOR OF NEW MEXICO

Chairman Bishop, Chairman Gosar, Ranking Member Lowenthal, and Subcommittee members, thank you for the opportunity to speak with you today on an issue that is of incredible importance and urgency to the state of New Mexico, western states, and the Federal Government.

Today alone, my state will lose out on approximately \$2 million in tax revenue due to a backlog for Applications for Permit to Drill by the Bureau of Land Management in New Mexico. This same delay in application approvals will cost the Federal Government another \$3.5 million in revenues, again, in a single day.

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We've cut unnecessary government red tape and improved efficiency, we've expanded production in New Mexico, while at the same time cracking down on polluters and levying more fines than any prior administration did. And, we're

implementing our all-of-the-above energy plan to aggressively develop all sources of energy in New Mexico.

These four bills offer you an opportunity to improve Federal processes in a way that will make a measurable difference for all New Mexicans and millions of people across the western United States and the rest of our country.

Thank you for your time and consideration.

Dr. GOSAR. Thank you, Governor.
I now recognize Mr. McQueen for his 5 minutes.

**STATEMENT OF THE HON. KEN McQUEEN, SECRETARY,
ENERGY, MINERALS AND NATURAL RESOURCES DEPART-
MENT, STATE OF NEW MEXICO, SANTA FE, NEW MEXICO**

Mr. McQUEEN. Chairman Gosar, Ranking Member Lowenthal, and members of the Subcommittee, thank you for the opportunity to appear today to discuss oil and gas permitting on lands managed by the Federal Government. The overwhelming majority of Federal land ownership is concentrated in states west of the 100th meridian.

In New Mexico, the Federal Government owns 35 percent of the state's acreage, most of which is managed by the Bureau of Land Management. Oil and gas production in New Mexico is disproportionately produced on these Federal lands. In 2017, 57 percent of the oil and 65 percent of the New Mexico gas was produced from the Federal mineral estate.

Today, the Permian Basin is one of the most active plays in the world. In fact, 45 percent of the entire U.S. rig fleet is currently working in the Permian Basin. The Basin stretches across two states—25 percent of the Basin falling in New Mexico and the remainder in Texas. Texas was blessed not only with a larger portion of the Basin, but also with no Federal lands.

This all works to New Mexico's disadvantage. In Texas, you can have a permit and a well drilled quicker than you can complete the APD Federal paperwork in New Mexico. The oil and gas industry is a very cyclical business with wide, unpredictable swings in activity. During the last price collapse, New Mexico saw drilling rigs drop from 103 to 13 in just 17 months.

That is why it is so important to provide as many permits as possible while oil prices are high, as they are today. That way, when we move into the next slow-down, having a larger inventory of producing wells on-line will help buoy the state through the down-cycle. My dad always told me to make hay while the sun shines.

Because it seemed unlikely that a petition to redraw the Texas–New Mexico border to locate more of the Permian in New Mexico would succeed, we are here today encouraging you to examine and address process inefficiencies that will help put states like New Mexico with a heavy BLM presence on a more level playing field with states like Texas, who still wonders what BLM stands for.

These proposals developed by Governor Martinez and endorsed by six other western state governors, including North Dakota, Oklahoma, Utah, Alaska, Idaho, and Wyoming, offers a practical and common-sense approach to addressing the mountain of backlogged permits on Federal lands.

Currently, there are over 850 applications for permit to drill, or what we call APDs, pending in the Carlsbad, New Mexico BLM field office. That is the heart of the Permian Basin. The BLM will eventually approve most, if not all of the APDs. However, marshaling each APD through the present process will take an average of 250 days. These delays present significant cost to the Federal Government and the state of New Mexico.

Given current oil and gas prices, over a 1-year period these delays will cost the Federal Government over \$1.3 billion, and New Mexico over \$700 million. These revenues are not deferred because of substantive FLPMA, NEPA, or other objections. Rather, these revenues are deferred solely because of process inefficiencies.

These proposals do not subjugate one statutory process to another. Rather, they ensure that when circumstances call for limitations on development, those limitations will be based on substance and not process alone.

The first proposal right-sizes the geographic scope of a BLM APD. Under current processes, field offices require an APD for production and exploration activities situated on non-Federal surface if the activity penetrates Federal minerals. This proposal removes the APD requirement for production and exploration activities situated on non-Federal surface if the operator submits to BLM a state-issued permit to drill.

The second proposal introduces practical NEPA categorical exclusions on certain activities conducted under the Mineral Leasing Act. Importantly, the new categories of activities are activities that mirror existing land use activities or are categories of activities that have already undergone NEPA analysis.

The third proposal is perhaps the most impactful, and while novel in oil/gas context, it is not without precedent. The proposal shares attributes with the well-known Clean Water Act Section 404 nationwide permitting scheme, which has been in existence for decades. Under the proposed program, an operator submits a notification of a permit to drill in lieu of an APD. The notification must include certain specified items. Assuming a complete notification, the operator can move forward with its proposed production activities, unless within 45 days it receives notice that the Secretary of the Interior objects to proposal and the production activity.

In conclusion, the problem with energy development in New Mexico and similarly situated states is real. Waiting a year for a permit is an economic poisoned pill. These bills, like Governor Martinez's proposal, present practical and executable solutions that eliminate process inefficiencies and get the process of developing energy and an economy back on track. To the extent that there are opportunities to pilot these or other similar proposals on a regional or state level, New Mexico is ready and willing to get started. Thank you.

[The prepared statement of Mr. McQueen follows:]

PREPARED STATEMENT OF KEN MCQUEEN, CABINET SECRETARY, ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT, STATE OF NEW MEXICO

INTRODUCTION

Chairman Gosar, Chairman Bishop, Ranking Member Lowenthal, members of the Subcommittee, thank you for the opportunity to appear today to discuss oil and gas permitting on lands managed by the Federal Government.

The Bureau of Land Management administers some 245 million surface acres (a tenth of the U.S. land base) and 700 million subsurface mineral acres. While no one here will be surprised by this fact, it nevertheless is worth mentioning that the overwhelming majority of Federal land ownership is concentrated in states west of the hundredth meridian. Consider that the Federal Government owns 48 percent of Wyoming, 61 percent of Idaho, 63 percent of Utah, 61 percent of Alaska, and 80 percent of Nevada, whereas Federal ownership falls to nominal levels as you move east, with the Federal Government owning only 1.8 percent of Texas, 1.1 percent of Illinois, 2.1 percent of Pennsylvania, 1.2 percent of Massachusetts, and 0.6 percent of New York.¹ As everyone here knows, Federal land ownership, with its complex regulatory overlay, can stymie land use and development. With the bulk of western states' lands falling under Federal ownership, the conclusion is not a hard one to reach that in the context of land management opportunities, western states are at a comparative disadvantage to their eastern sister-states.

In New Mexico, the Federal Government owns 35 percent of the state's acreage, most of which is managed by the Bureau of Land Management (BLM). Oil and gas production in New Mexico is disproportionately produced on those Federal lands. Consider that in 2017, 57 percent of New Mexico's oil and 65 percent of New Mexico's gas was produced from the Federal mineral estate.

Today the Permian Basin is one of the most active plays in the world, in fact, 45 percent (477 rigs) of the entire U.S. rig fleet is working in the Permian Basin. The Basin stretches across two states—25 percent of the basin falling in New Mexico and the remainder in Texas. Texas was blessed, not just with a larger portion of the basin, but also with no Federal lands. This all works to New Mexico's disadvantage. In Texas you can have a permit and a rig on location quicker than you can fill out the paperwork to drill a well on Federal acreage in New Mexico.

The oil and gas industry is a very cyclical business, with wide and unpredictable swings in activity. During the last price collapse, New Mexico saw utilized drilling rigs drop from 103 to 13 in 17 months.

Why does this matter?

It's important to provide as many permits as possible while oil prices are high, as they are today. That way, when we move into the next slowdown, having a larger inventory of wells drilled and more production on-line will help buoy the state through the down cycle.

Because it seemed unlikely that a petition to redraw the Texas-New Mexico border to locate more of the Permian in New Mexico would succeed, we are here today encouraging you to examine and address process inefficiencies that will help put states like New Mexico, with a heavy BLM presence, on a more level playing field with states like Texas, who still do not know what BLM stands for. This proposal, developed by Gov. Martinez, and signed on by five other western state governors, offers a practical and common-sense approach to addressing the mountain of backlogged permits on Federal lands.

When the BLM makes decisions for the multiple-use lands under its management, specifically decisions regarding mineral development, the decisions are primarily governed by three statutes—the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act (NEPA), and the Mineral Leasing Act. Often this collection of statutes has been perceived to be anti-development in nature. This perception is not in keeping with the statutory language. Consider the purposes of the statutes.

FLPMA instructs the BLM to manage its resources “based on multiple use and sustained yield” and in a manner that protects “scenic, historical, ecological [and] environmental” resources and values.²

NEPA instructs the Federal Government to cooperate with state and local governments to “foster and promote the general welfare, to create and maintain conditions

¹Federal Land Ownership: Overview and Data, Congressional Research Service, March 3, 2017, (available at <https://fas.org/sfp/crs/misc/R42346.pdf>).

²43 U.S.C. § 1701(a)(7)–(8).

under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”³

The Mineral Leasing Act instructs the Federal Government to “foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.”⁴

FLPMA promotes multiple-use and sustained yield and the Mineral Leasing Act encourages private enterprise and economic development. These pro-development mandates are balanced by NEPA’s environmental considerations. NEPA is not, however, intended to stymie development, rather implement a process to help find balance. Together these statutes promote both development and environmental protection. However, the current implementing processes under these statutes have been largely co-opted by anti-development interests with the intent of stalling and preventing through delay the multiple use sustained yield mandate.

THE PROPOSALS

Currently, there are over 800 Applications for Permit to Drill (APDs) pending approval in the Carlsbad, New Mexico BLM field office—the heart of the Permian. The BLM will eventually approve most, if not all, of these APDs, however, marshalling each APD through the present process will take an average of 250 days. These delays present significant costs to the Federal Government and the state of New Mexico. Given current oil and gas prices, over a 1-year period these delays will cost the Federal Government over \$1.3 billion and New Mexico over \$700 million. These revenues are not deferred because of substantive FLPMA, NEPA, or other objections, rather these revenues are deferred solely because of process inefficiencies.

The proposals before the Subcommittee eliminate process inefficiencies. They do not subjugate one statutory purpose to another, rather, they ensure that when circumstances call for limitations on development, those limitations will be based on substance and not process alone. Process for the sake of process should not be allowed to frustrate the multiple-use and economic development mandates.

No Federal Permit Required for Production Activities on Non-Federal Surface

The first proposal right-sizes the geographic scope of a BLM APD. Under current processes, field offices require an APD for production and exploration activities situated on non-Federal surface if the activity penetrates Federal minerals or if the operation is unitized/communitized with Federal minerals. Under these scenarios, production/exploration activities situated entirely on private land would require an APD and consequently NEPA process if, for example, the increasingly common multiple-mile horizontal well-bore penetrates, even slightly, Federal minerals, or if a well situated entirely on private surface that never penetrates Federal minerals but is unitized with Federal minerals.

This proposal removes the APD requirement for production and exploration activities situated on non-Federal surface if the operator submits to the BLM a state-issued permit to drill and the United States owns less than 50 percent of the target minerals.

NEPA Categorical Exclusions

The second proposal introduces practical NEPA categorical exclusions for certain activities conducted under the Mineral Leasing Act. Importantly, the new categories of activities are activities that mirror existing land-use activities or are categories of activities that have already undergone NEPA analysis. For example, drilling an oil or gas well at a well pad site at which drilling has occurred previously, or drilling an oil and gas well at new well pad sites, provided the new disturbance does not exceed 20 acres or the amount of acreage evaluated in prior NEPA.

I would recommend a slight tweak to the proposal as presently drafted and extend the time frame on current categorical exclusions to 10 years. This makes sense because the last two Resource Management Plans have taken nearly 5 years to complete.

Notification of Permit to Drill (NPD)

The third proposal is perhaps the most impactful, and while novel in the oil and gas context, is not without precedent. This proposal shares attributes with the well-known Clean Water Act Section 404 nationwide permitting scheme, which has been

³ 42 U.S.C. § 4331(a).

⁴ 30 U.S.C. § 21a.

in existence for decades. Under the proposed program, an operator submits a notification of a permit to drill in lieu of an APD, which notification must include certain specified items, such as a surface use plan of operations, a drilling plan, a well plat, evidence of bond coverage, the appropriate fee, etc. Assuming a complete notification and that the operation meets certain additional specified criteria, the operator can move forward with its proposed production activity, unless within 45 days it receives notice that the Secretary of Interior objects to the proposed production activity.

Like the Clean Water Act Section 404 nationwide permitting scheme, this proposal instructs the Secretary to develop regulations establishing procedures that will implement the program and further contemplates the preparation of a NEPA analysis as part of that rulemaking. The effect is to adjust the timing of the NEPA analysis. Rather than conducting NEPA upon receipt of an APD, the proposal contemplates a large, umbrella NEPA review contemplating oil and gas production activity within specified areas. Then, when an operator intends to move forward with production activity at a specific site, it must conduct a limited environmental review that must conclude that the actions described in the notification do not pose a significant effect to the environment or to threatened or endangered species.

CONCLUSION

In conclusion, the problem with energy development in New Mexico and similarly situated states is real. Waiting a year for a permit is an economic development poison-pill. These bills, like Governor Martinez's proposals, present practical and executable solutions that eliminate process inefficiencies and get the process of developing energy and an economy back on track. To the extent there are opportunities to pilot these or other similar proposals on a regional or state level, New Mexico is ready to get started.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE KEN MCQUEEN,
SECRETARY, NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT

Questions Submitted by Rep. Ben Ray Luján

Question 1. In a presentation to the New Mexico legislature in November 2017, Secretary McQueen presented figures purporting to estimate the scope of the methane waste and pollution problem in New Mexico, but these figures excluded the volume of methane leaked by the oil and gas industry. Scientific studies have shown that these fugitive emissions make up most of oil- and gas-related methane emissions. What steps has the New Mexico state government taken to correct these figures to fully account for all sources of oil- and gas-related methane pollution and waste?

Question 2. During your confirmation hearing, Secretary McQueen, you stated that you believed the infamous hotspot of methane pollution over northwestern New Mexico—the most concentrated plume of methane found anywhere in the country—was due to “natural causes.” Now that scientific reports from top scientists at the National Oceanic and Atmospheric Administration (NOAA), the University of Michigan, and the University of Colorado have linked this pollution hot spot directly to problems with oil and gas wells in the San Juan Basin, have you changed your opinion?

Question 3. We have been informed that the state of New Mexico's Energy, Minerals and Natural Resources Department requires oil and gas operators to report monthly on their venting and flaring volumes, but that this information is not available or easily accessible to the public through the Oil Conservation Division's statistics website. Why hasn't this agency provided this information to the public? Will you provide summary statistics and public access to the raw data?

Question 4. On March 8, 2017, the Director of New Mexico's Oil Conservation Division issued a letter to operators that indicated a failure in compliance for operators reporting venting and flaring. What has the state done to rectify this problem? What is the current status of compliance?

Question 5. Governor Martinez's 2015 energy strategy listed methane as a “leading New Mexico emissions concern in the energy sector.” What has the Martinez administration implemented since 2015 to address this methane concern?

Question 6. The Governor's 2015 Energy Strategy went on to state that the Oil Conservation Division "will be collaborating with several other state agencies to assess the economics and benefits to both the state and industry of better capturing methane emissions." What is the current status of that analysis?

Answers.

In 2015 Governor Susana Martinez directed then-Cabinet Secretary, Dave Martin of the Energy, Minerals, and Natural Resources Department to convene a joint industry-government task force to study methane releases in New Mexico. The Governor's directive was to: (1) quantify vented and flared volumes of methane in New Mexico and compare them to surrounding states; (2) identify technological advancements that could be employed to reduce vented and flared volumes; (3) consider possible regulatory approaches that might reduce vented and flared volumes; and (4) eliminate or adjust regulations that slow or otherwise impede technological implementation/innovation that could reduce venting and flaring. This Gas Capture Workgroup has met regularly since 2015.

Workgroup recommendations and ongoing efforts to reduce methane emissions.

The Workgroup has delivered several recommendations to the New Mexico Oil Conservation Division (OCD), all of which have been implemented. The first recommendation requires operators to quantify and report, monthly, non-transported, i.e. flared and vented, volumes. Effective October 19, 2015, OCD notified all Operators to report non-transported volumes on their C-115 production reporting. The change became effective for the November 2015 production month, with the first round of monthly reporting due no later than January 15, 2016.

The Workgroup also recommended that all operators submit a Gas Capture Plan (GCP) to OCD with their Application to Drill (APD). The GCP outlines and specifies how an operator intends to avoid flaring and venting methane, which includes communicating with transport and processing companies for the potential increase in the volumes. OCD adopted this recommendation in May 2016. The New Mexico GCP form was subsequently adopted by the BLM for Federal APDs in New Mexico.

Additionally, OCD regulations prohibit the venting or flaring of methane. The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is prohibited. The exception to this prohibition is for limited completion activities, which allows an operator to flare or vent casinghead gas from a well for up to 60 days.

Using data compiled from monthly non-transported volume reporting, the Workgroup evaluates reported volumes to help ensure compliance is achieved. Investigation of operators failing to report found 56 instances among 15 operators where vented or flared volumes may not have been properly reported. Follow-up continues with individual operators to validate and ensure correct C-115 reporting. Considering that approximately 60,000 active wells report monthly volumes in New Mexico, the incidence of non-reporting is miniscule. Operators who fail to report are subject to OCD enforcement, up to and including suspension of their approval to transport. Addressing this observation, OCD issued a notice to operators on March 8, 2017, reiterating the reporting requirement.

During the time the Workgroup has existed, New Mexico has seen its vented and flared volumes decreased by nearly 50 percent. Technological innovation is the primary driver behind the reductions, with many operators making significant expenditures to install new equipment, such as low-bleed controllers. By utilizing new and more advanced equipment as well as by adhering to evolving best-management practices, continued shale drilling is not expected to contribute additional volumes of methane. Furthermore, basic rules of economics mandate methane recovery over venting or flaring—every molecule of methane that is vented or flared is a molecule of methane that is not sold and thus represents lost revenue to the producer.

Technological evolutions coupled with process innovations have and will no doubt continue to provide increased reductions in methane emissions. Some of the advancements and innovations driving the reduction in vented and flared volumes in New Mexico include:

- Proactivity by operators in constructing takeaway facilities and pipelines in advance of drilling;
- Replacement of high-bleed controllers with low-bleed controllers;
- Operator owned gathering system in the San Juan Basin, facilitating blending of high-nitrogen gas before sales point;
- Pad drilling (one gathering line supports multiple wells);

- Use of electric controllers on new facility installations;
- Installation of solar powered controllers;
- Well-site cryo unit to separate and collect hydrocarbon liquids.

The Fruitland Coal outcrop is a significant source of naturally occurring methane.

Regarding methane concentrations in northwestern New Mexico, consider this context. Methane originates from multiple sources, some man-made, some natural. Most of the data collected to date in northwest New Mexico has either been from qualitative methods or simulation. The San Juan Basin possesses a unique geologic feature—it is ringed on the west and north by an outcrop of the Fruitland Coal seam. This feature is a significant coal source and has been commercially mined for years.

The coal outcrop not only provides ready access to coal but emits significant and steady volumes of methane. Certain voices have placed blame for methane concentrations in the northwest at the foot of New Mexico oil and gas producers, while ignoring the elephant-sized methane emitter which is the Fruitland Coal outcrop.

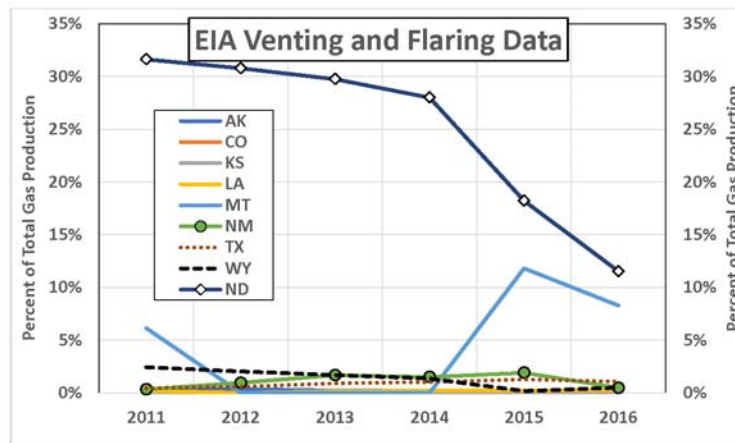
As reported by the Colorado Oil and Gas Commission, in 2017, the 23-mile outcrop in LaPlata County, Colorado emitted 16,650 Mcf per day. Consider that an additional 40 miles of the outcrop exists across the Southern Ute Reservation and New Mexico. Those 63 miles of outcrop are responsible for approximately 45,606 Mcf per day of methane emission, which is equivalent to 77 percent of the total natural gas flared in New Mexico in April 2018.

Impacts to Marginal Wells

The economic impact of methane mitigation must be weighed against the value of continued production in marginal wells. At last count, New Mexico had 17,451 marginal gas producers which make up 17 percent of the state's total gas production. In the current price environment, many of these wells produce marginal profits at best, so imposition of additional operational costs will result in cessation of production from these wells.

New Mexico is a leader in methane reductions.

The U.S. Energy Information Administration (EIA) provides estimates of vented and flared volumes from several states. New Mexico compares very favorably to other reporting states. The available data is charted below:



There are no lost royalties beyond the custody transfer site.

Finally, some have raised concerns about revenue that is lost from methane that is leaked from transportation infrastructure, e.g. pipelines. This concern is unfounded. The custody transfer of natural gas generally occurs at the wellhead, meaning royalties are paid on volumes measured at that point. In other words, royalties on volume of methane leaked downstream of the custody transport site have already been paid—there is no lost revenue to the state. The only lost revenue on any methane that might be leaked downstream of the custody transfer site are revenues lost to the owner of the gas.

Dr. GOSAR. Thank you, Mr. McQueen.
I now recognize Mr. Willis for his 5 minutes.

STATEMENT OF DENNIS WILLIS, PRICE, UTAH

Mr. WILLIS. I thank the Subcommittee for the opportunity of participating in today's hearing.

For 35 years, I was employed by the Bureau of Land Management. I worked in many aspects of the oil and gas program. And we always involved all stakeholders, regardless of their welfare or political influence. Since retiring, I have engaged in these processes as a board member of the Nine Mile Canyon Coalition, a local non-profit. I am here today as a private citizen and resident of Carbon County, Utah.

In Carbon County, we revel in a 130-year heritage of energy development and production. We value industry's contributions to our economy, but we also expect them to be a good neighbor. We rely on the NEPA process to make sure companies learn about potential conflicts and are aware of community sensitivities.

The most contentious project I worked on was the West Tavaputs drilling project, a 140,000-acre project involving Federal, state, and local agencies, several native tribes, 18 consulting parties, and we received over 58,000 public comments. In the end, no appeals were filed. Utah's governor proclaimed the effort energy development done right. And I am sure, without NEPA, we would still be in litigation today.

NEPA is a wonderfully democratic law, assuring that the public is not just informed of Federal actions, but can participate and see a response to their input. There is no justification for providing sweeping NEPA exemptions for an activity as potentially harmful as oil and gas development. CXs are for actions that do not have a significant effect on the environment. They are not available because some industry finds NEPA bothersome.

We should be encouraging the industry to use the piles of unused permits and leases it already has.

Eliminating site-specific reviews also eliminates the opportunity to modify proposals, minimize conflicts, protect human health and safety, and safeguard critical resources.

Under the proposed notice and CX scheme, all BLM could do would be to catalog the damage and commiserate with citizens whose opportunities to enjoy public lands are unnecessarily diminished.

These bills replace informed local decision making with a top-down rulemaking from Washington, DC, something members of this Committee have complained about for 40 years.

My daughter is getting married in August on public lands. To get her recreation permit under a CX, her wedding party cannot occupy more than 3 acres, remove vegetation, and cannot exceed 14 days of occupancy. How should a driller be allowed to bulldoze the same site to 10 acres, occupy the land for 50 years without any consideration of the consequences?

In Carbon County, a group of citizens want to develop some mountain bike trails on public lands, so we worked with BLM through the NEPA process, including placing trails around oil and gas infrastructure. It is actually in a producing field. If a small

group of volunteers with no financial resources can figure this out, surely the burden is not too great for the paid professionals within the industry.

We often hear industry brag about its ability to use technology to avoid harm. I, myself, have seen firsthand their very impressive results with directional drilling, noise reduction, visual mitigation, that sort of thing. Under the proposed rules, the company won't even have to contemplate using such techniques, nor could BLM even suggest them.

The proposed fees for protesting a lease are another onerous attempt to silence local voices. The purpose of a protest is to identify error in the agency decision. The more errors, the more expensive it would be for the public to point it out with the cost per page.

In the meantime, anybody can nominate a lease parcel at any time for any reason. The nominator can remain anonymous. They pay no fees. They are not obligated to bid the parcel if it is offered for auction. And BLM incurs all the expenses of parcel valuation and lease preparation. There should not be a fee for reconsidering leasing for a good cause, but maybe there should be one for nominating a lease.

These bills are a gift to the oil and gas industry at the expense of public lands resources and the people who live with and care about their public land heritage. Please don't claim these bills make sense to the public, the public lands, to those tasked with managing them, or for communities in the West. Please don't move them forward.

Thank you for the opportunity to share my experience, and I thank the Committee.

[The prepared statement of Mr. Willis follows:]

PREPARED STATEMENT OF DENNIS WILLIS, PRICE, UTAH

I want to thank the Subcommittee for this opportunity to participate in this hearing and in our exercise of democracy. For most of 35 years, I was a public servant, employed by the Bureau of Land Management. During my career I worked in many aspects of the oil and gas leasing program. From the development of resource management plans (RMPs) to the preparation of lease sales, the permitting of an individual wildcat well to working on three environmental impact statement (EIS) documents for full field development. I saw the value of listening, learning and utilizing the good information and great passion the public brought to the process. The processes outlined in the Federal Land Policy and Management Act and the National Environmental Policy Act (NEPA) work because they seek involvement from all stakeholders regardless of the wealth, political influence, or popularity they may or may not enjoy. Since retiring, I have been involved in these processes as a member of the public and as board member of the Nine Mile Canyon Coalition, a small, local non-profit corporation. I am here today as a private citizen, a resident of Carbon County, an area blessed with both mineral wealth and awesome, iconic western landscapes. As the name suggests, my county has been heavily reliant on the production of fossil fuels for about 130 years.

In Carbon County we revel in our heritage of coal and oil and gas production. We value the contributions those industries make to our economy, tax base and employment. We also love our legacy of public lands. Our ranchers use the land for livestock production; we enjoy night skies and the rare experience of reading a book by the light of the Milky Way. We use public lands to hunt, fish, hike, bike, go four wheeling and teach our children and grandchildren. We live in the desert; our scarce water resources and community watersheds are precious. We enjoy jaw dropping, spectacular scenery. Archaeological and historic sites tell the tale of people on these landscapes for over 8,000 years.

We welcome oil and gas development but with the expectation the industry will be a good neighbor, considerate of community needs and sensitivities. When oil and gas projects happen, we do not dedicate the entire landscape to production. There

is an expectation that other uses and users will continue to enjoy the public lands without undue burden. The NEPA process is how the oil and gas companies learn about the potential user conflicts and community sensitivities. It is part of the way we all stay good neighbors.

These bills are crafted solely to benefit the oil and gas industry by allowing them to avoid Federal environmental law and ride roughshod over local public interest. These bills shut out the local public from participating in the management of their public lands. It also bars participation of other Federal, state, and local agencies that routinely participate in the NEPA process. It denies the right of the public to freely petition their government, participate in the public NEPA process and have their concerns heard and addressed. It removes discretionary authority from the local public land managers and imposes a one-size-fits-all directive from the Congress. It ties the hands of land managers and local communities to identify, address and minimize conflicts administratively, leaving litigation as the only avenue to conflict resolution.

The most contentious oil and gas project I worked on in my BLM days was the West Tavaputs Drilling Project. The West Tavaputs Plateau has almost every resource category found on BLM lands. There are wilderness issues, wild horses, deer, elk and bighorn sheep, outstanding archaeology, endangered plants, birds and fish, sage grouse and the list goes on. Every issue, resource and resource user conflict you can imagine all occur on that one 140,000 acre project area. The West Tavaputs EIS involved 5 Federal agencies, 5 state and local agencies, several Native American tribes, and 18 consulting parties, including local and national environmental groups. The draft EIS generated 58,000 public comments. Through the NEPA process, extensive outreach and meetings with interested stakeholders concerning resource impacts and alternative ways to address them, a final decision was reached. Nobody got everything they wanted but everyone got their needs met. The industry gave up some drilling locations and surrendered some leases. Environmental groups made concessions on wilderness; archaeological and sportsmen's groups also made compromise; and adversaries became good neighbors. When it was all over, there were no appeals filed. Utah Governor Gary Herbert proclaimed the effort as "energy development done right." Members of the Utah congressional delegation agreed. Without the NEPA process bringing people to the table, the project would still be in litigation today, 8 years after.

What might be fast and cheap for the energy industry may not be good for local communities in the West. The existing process, while not as fast as some would like, is effective at engaging communities, forging cooperation and results in a western landscape we can all thrive in.

The suite of bills we are discussing today are of great concern. This legislation seeks to end the practice of local BLM decision making based on site specific conditions and input from nearby communities and the broader public. It would silence the ability of local citizens contribute local knowledge and identification of community needs. These bills would usurp informed, rational, local decision making with a top down, one-size-fits-all, dogmatic rule imposed by Washington, DC. This is exactly the type of action I have heard current and past members of this Committee rail against for the last 40 years.

NEPA is one of this Nation's bedrock environmental laws. It is also a wonderfully democratic law; assuring the public is fully informed of Federal actions, assuring the public the opportunity to participate and that public comments are not just received, but responded to. While it is sometimes cast as a villain of bureaucratic red tape or "paralysis by analysis," it is important to remember the objectives is assuring Federal decision makers are making fully informed, rational decisions and the public is fully informed and allowed to contribute to the decision-making process. In my opinion, the most important NEPA regulation is found at 40 CFR 1500.1(c):

*Ultimately, it is not better documents but better decisions that count.
NEPA's purpose is not to generate paperwork—even excellent paperwork—
but to foster excellent action.*

There is simply no good reason to exempt the oil and gas industry from NEPA review and block the public from the decision-making process for development on publicly-owned lands.

CATEGORICAL EXCLUSIONS AND NOTICE OF PERMIT TO DRILL

BLM is tasked with multiple use management accommodating all competing resources. The site-specific review process affords the BLM and the public the opportunity to review and modify proposals to minimize conflicts between competing interests, protect human health and safety, and safeguard critical resources. It also

enables the BLM the opportunity to make modifications and, enact appropriate and reasonable drilling stipulations on development proposals. The proposed CX expansion would eliminate these site-specific evaluations. It would also eliminate the public's right to participate in the NEPA process. Critically, the proposed legislation would eliminate BLM's discretionary ability—in coordination with affected communities and members of the public—to implement solutions that will help avoid needless resource use conflicts. This proposal is a recipe for increased conflicts over public lands, as if there were not enough of that already. It takes away the opportunity to work through the NEPA process, and will instead lead to increased conflict between development and other uses of public lands.

The proposed use of a Notice system and categorical exclusions (CXs) for oil and gas drilling permits are unwise and unwarranted. The Council on Environmental Quality guidance on CXs is to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (40 CFR 1500.5k). In BLM they mostly cover minor administrative actions like inventory and monitoring, or to transfer an authorization from one entity to another where there is no change on the land. They are also used to cover maintenance of existing facilities, placing directional signs and the like.

Oil and gas wells simply do not fit the criteria for a CX given that these activities are among the most impacting activities permitted by BLM on a regular basis. They deserve the scrutiny provided by the NEPA process. An oil and gas well site can have major impacts. The associated access roads and pipelines that are affiliated with oil and gas development can frequently have bigger impact issues than the wells itself. The overarching consideration for creating a CX is a lack of impact from the activity, not the project proponent finding the application of NEPA a bother. And when BLM is deciding whether or not to apply a CX, it is supposed to conduct a review to see whether known extraordinary circumstances or, in the case of some CXs, other information indicating environmental review is needed are applicable. If they are present, the process ensures that the BLM can require additional NEPA documentation in order to ensure a better decision.

This proposed legislation is also out of proportion with other BLM CX provisions. For example, this proposal allows heavy equipment surface disturbance on up to 10 acres individually and 150 acres cumulatively. My daughter is getting married on public land in August. For her wedding to obtain a recreation permit using a CX, the wedding party cannot occupy more than 3 acres, removal of vegetation and earth moving are not allowed, and occupancy of site is limited to no more than 14 days. If a simple family wedding is held to a limit of 3 acres, it begs the question why a drilling company could bulldoze the entire site to 10 acres and occupy the area for upwards of 50 years.

These bills seem to assume that BLM has already evaluated the site-specific impacts of drilling. But that is seldom the case prior to the permitting stage. Rather, BLM's planning leasing and permitting processes actually anticipate more intensive environmental analysis prior to issuing permits to drill. When BLM conducts an RMP process, the areas open to oil and gas leasing are drawn on a very large-scale map with low resolution and the majority of lands are left open to leasing. At the leasing stage, BLM may decide that the area is generally suitable for leasing but under current BLM policy, there is no requirement to conduct a detailed analysis of potential impacts. As a result, when applications for permits to drill (APDs) come in, that is the only time oil and gas development gets looked at on a site specific, small scale, high resolution basis. BLM needs to retain discretion at all phases of leasing and development to meet its multiple use mandate, these lands are not presumably sacrifice zones for oil and gas development. Yet, these bills would largely prevent BLM from considering harm from drilling and from taking any measures to prevent such harm.

The site-specific evaluation and NEPA review of APDs are critical. Decisions to site wells commit resources for decades; they are long-term, irreversible, irretrievable commitments of resources. They frequently involve major alteration of the topography and landscape. Conflicts can frequently be avoided by moving the well, sometimes by a matter of feet; and, in other cases, BLM can find a more suitable site for a developer within a few miles. Design changes can be incorporated at the APD stage to minimize impacts to scenic resources, protect water, reduce noise impacts, and prevent wildlife injury. Without the application of NEPA, there is no opportunity for the local manager or local land users to make changes or otherwise address and avoid conflicts; this seems to virtually encourage litigation as the avenue for resolution.

The proposed Notice and CX process provides no opportunity to mitigate conflicts. A Notice may place a well on a National Historic Trail or on an important scenic

overlook. It may be located in especially sensitive and critical wildlife habitat or a community water source. Under the current process, BLM can address and mitigate these conflicts. Under the proposed Notice/CX scheme proposed here, all BLM could do is catalog the damage and commiserate with citizens whose opportunities to enjoy public lands are unnecessarily diminished, if they are notified at all.

There is also a basic fairness issues among public land users. In Carbon County, a group of citizens formed a committee to develop some singletrack mountain bike trails on public lands. These trails provide recreational riding opportunities and helped to link towns and communities. The committee worked through the NEPA process in cooperation with the BLM. Public input was solicited, and through the process we developed a better, more cohesive trail system than was originally proposed. NEPA worked as intended, it required a look at alternatives and resulted in a better project. NEPA on APDs work in much the same way. If a small group of community volunteers with no financial resources can wade through the system for a non-motorized singletrack trail, surely the burden is not too great for the paid professionals within the oil and gas industry. How do you explain to a volunteer group their non-motorized trail, constructed with hand tools requires a NEPA analysis but an oil company can bulldoze roads, pipelines and operate a well pad without any NEPA consideration? Much of our trail system is in a producing coalbed methane field. The trails were placed to avoid industry infrastructure. With the proposed Notice system and CXs, a drilling company could plop down facilities that obliterate our trails with no consideration or mitigation.

There is simply no justification for providing an activity that is as widespread and potentially harmful as oil and gas development with such sweeping exemptions from the NEPA process. The oil and gas industry already has thousands of unused drilling permits in Utah and throughout the West, and millions of acres of idle leases, which raises questions of why these bills are even under consideration and whether this Committee should instead be examining ways to force the industry to use the permits and leases it already has.

Additionally, as drafted, the CX provisions have a major logical flaw. The proposed CX covers wells drilled in a field within 5 miles of an existing well. It is obvious a 5-mile radius covers a lot of country, approximately 78 square miles. That is 78 square miles where BLM will not have the opportunity to review critical areas and resources and the public will not have any say in the matter. An example from our area is known as the Tavaputs Plateau. The plateau is highly dissected by deep canyons. The canyon bottoms contain highly sensitive riparian and archaeological resources. The company that filed the original drilling proposal for this area requested multiple wells in the canyon bottoms. Through the NEPA process, and after the public provided information documenting the potential for impacts on cultural and natural resources, it was decided there would be no wells in the canyon and those targets would be drilled directionally from the top of the plateau. Those canyon bottoms are well within the 5-mile radius. The next Notification of a Permit to Drill could locate a well in the sensitive canyon bottom. The proposed CX would eliminate the ability of the local BLM office to require directional drilling from the plateau, resulting in the loss of critical resources unnecessarily, and without any mitigation. More broadly, the CXs included in the bills are so sweeping and generally written that they would lead to many of the same problems that plagued the use of the Energy Policy Act CXs. According to a recent statement from the Government Accountability Office: "These problems, in a nutshell, were that BLM did not have good internal controls or guidance for how and when to use categorical exclusions. Therefore they were using them inappropriately in many cases and perhaps not using them when it was appropriate."¹

We have often heard the industry brag about its ability to use technology like directional drilling to avoid occupying sensitive sites. I have seen their abilities in directional drilling, noise reduction and visual mitigation firsthand and they are impressive. Under the proposed Notice and CX process, the company will not have to contemplate whether such techniques are appropriate and BLM would not be in a position to even suggest them.

The proposed Notice/CX process eliminates the ability of the BLM to manage public lands in areas with oil and gas activity. It will create conflict and litigation where the conflict could easily be mitigated. It denies the public and local citizens from having their rightful say in the management of public lands.

¹ Energywire, June 1, 2018, "Royalty panel recommendation could rehash NEPA controversy" <https://www.eenews.net/energywire/2018/06/01/stories/1060083159>.

PROTEST PROCESS REVIEW

The proposed fees for protesting an oil and gas lease are onerous, burdensome and a further attempt to silence the local public. The Nine Mile Canyon Coalition has protested oil and gas leases in the past. But the decision to protest is not arrived at easily and preparation of a protest is difficult and stressful. Nobody files a protest frivolously or as a gratuitous exercise of free expression. Protests are only filed when the protester believes the BLM made a substantial error in their evaluation of the lease nomination. It is a continuation of the public participation in the NEPA process. The protest points out an error in agency decision making, gives BLM the opportunity to correct it and issue a better decision.

It is rather strange to have the BLM charge the public a fee for pointing out and helping BLM correct its errors.

Once again, there is an inherent unfairness in the process. Anybody can nominate any lease parcel at any time, for any reason, or no reason at all. A nomination can be frivolous, arbitrary and capricious. Once nominated, the BLM incurs all the expense of parcel evaluation and lease preparation. The nominator pays no fees and is under no obligation to bid on the parcel once it is offered. The nominator can choose to remain anonymous. Once BLM makes a decision to lease, a protester must present substantive reasons and show that the agency has made demonstrable errors within 10 days to have BLM reconsider its decision. The protester cannot choose to be anonymous. Requesting a Federal agency to reconsider a decision for good cause should hardly be the type of action requiring the public pay a fee. Why should the public pay a fee for correcting/improving the work of an agency? It is the nomination of a lease that should be subject to a cost recovery provision (see Sec 304 of Federal Land Policy and Management Act).

Along with the proposed fees having a chilling effect on public participation, the proposed structure is simply silly. The purpose of a protest is to point out demonstrable error in the agency decision. The more error, the longer the protest is likely to be. The proposed fee structure provides an inducement for the BLM to do poor quality work and then charge a fee to the public for correcting it.

MINORITY FEDERAL MINERALS

While I do not have direct experience with these situations, the proposed bill raises two concerns in need of further consideration.

1. The development and production of the Federal mineral estate is a Federal action. The proposed legislation attempts to redefine Federal action in this particular instance. I would question whether this is a rational or proper determination. The Federal agency still is responsible for resource recovery, and protection of other resources in production of the Federal oil and gas, as well as for consideration of cumulative impacts. This bill removes Federal responsibility for everything but production verification and royalty recovery. The agency should not be relieved of its responsibility to human health and safety in the development of Federal minerals. The Federal agency must be able to hold operators accountable if one of these wells blows out due to an overpressure on the Federal lease or when down hole failures result in the contamination of ground or surface waters.

2. The proposed bill seems to provide an incentive to game the system. Using directional drilling techniques, an operator could fully develop the Federal mineral estate while avoiding all BLM review and oversight, and hence also all accountability to the public

CONCLUSION

What the oil and gas industry sees as burdensome red-tape, are critical protections, due process, rules of fair play, and economic lifelines for other public land users. The rules of the game should not be upended simply because of an inconvenience to one stakeholder, one industry, or one interest; they need to work for all the stakeholders at the table. What one industry sees as 'red tape' another industry sees as a lifeline, a local community sees as their ability to protect community interests, and a parent sees as the future western landscape and lifestyle their child inherits.

These bills are a pure gift to the oil and gas industry. An expensive gift benefiting one industry at the expense of public lands and resources, and detrimental to people who live with and care about their public land heritage. Please don't claim these bills make sense for the public or public lands or those tasked managing them, or communities in the West. Please don't move them forward.

Thank you for the opportunity to share my experience as a retired BLM employee, board member of Nine Mile Canyon Coalition, and resident of Carbon County, Utah.

Dr. GOSAR. Thank you, Mr. Willis.
I now recognize Mr. Baza for his 5 minutes.

**STATEMENT OF JOHN BAZA, DIRECTOR, UTAH DIVISION OF
OIL, GAS AND MINING, UTAH DEPARTMENT OF NATURAL
RESOURCES, SALT LAKE CITY, UTAH**

Mr. BAZA. Chairman Gosar, Ranking Member Lowenthal, and members of the Committee, thank you for the opportunity to speak to you today. My name is John Baza, and I am the Director of the Utah Division of Oil, Gas and Mining within the Utah Department of Natural Resources.

My division of Utah State government, which I will refer to as OGM, is the principal regulator for the petroleum and mineral extractive industries in the state of Utah. Our statutory charge is fostering the responsible development of Utah's mineral resources, while avoiding impacts that are detrimental to the public safety and welfare, and to preserve the environment to provide subsequent use of the lands affected by such development.

Because the bills being discussed today relate to oil and gas activities on Federal lands, I will focus mainly on the oil and gas regulatory processes that we perform pertaining to those activities.

The approval of drilling and production operations on Federal lands in Utah runs along two parallel tracks. One track is the Federal BLM process of reviewing and approving drilling applications for any well drilled upon a BLM mineral lease. The second track is a similar state process performed by OGM that not only includes permitting on Federal land, but on state, tribal, and private land as well.

This state process is conducted under state law that requires OGM to process drilling permits, and also be the repository of public data related to the drilling production of any well within the boundaries of the state. Companies doing business in Utah often feel that this is redundant, requiring separate drilling permit approvals from both the BLM and OGM for wells drilled on Federal land in Utah.

To further compare the parallel processes, OGM has developed a history of approving most applications to drill, or APDs, in 30 to 90 days. Some APDs that are more complex or sensitive may take longer, but these are the exceptions and not the standard. Yet, for Federal lands, BLM drilling approvals in Utah often take 12 to 18 months.

And lest you think the BLM process is more robust, that is simply not true. I assure you that the OGM process that has been in existence in one form or another since the year 1955 is focused on achieving responsible development with due regard to public health and safety and protection of the environment, and has met those goals with remarkable consistency. In fact, I would challenge anyone to compare wells drilled on Federal leases adjacent to those drilled on state or private leases to find any notable differences in operational conditions, land use impacts, or potential for environmental impact from those wells.

So, it is reasonable to ask, if outcomes are identical, then what justifies such vastly different processes to achieve the same results? I believe that thoughtful and creative thinkers could find

ways to accomplish the necessary objectives of requiring safe and protective oil and gas development on all lands, including those on Federal mineral estate.

As I have reviewed the draft language for the bills in question today, especially the proposed bill by Representative Curtis of Utah, I feel that they are trying to accomplish those same objectives. There needs to be an element of risk potential included in the Federal drilling analysis and approval process. If wells are to be drilled in lower-risk areas that have already been analyzed for environmental impact or in well-established areas of drilling and production, then let's find a more streamlined path to resource development than what exists today.

I believe that there are some missed opportunities for valuable yet reasonable mineral resource development on Federal lands if lengthy permitting processing times could be improved. With this in mind, I provide OGM's support for the process improvements suggested by the draft bills.

I might add that there may be more streamlining concepts that could be considered, as suggested by the aforementioned letter of Governor Martinez of New Mexico. This was a letter dated January 16, 2018 from six U.S. governors, including Governor Martinez and Governor Herbert of Utah, addressed to Secretary Zinke of the Department of the Interior. For your convenience, I have included that letter in my written testimony.

Thank you again for your time, and I stand ready to answer any questions.

[The prepared statement of Mr. Baza follows:]

PREPARED STATEMENT OF JOHN BAZA, DIRECTOR, UTAH DIVISION OF OIL, GAS AND MINING, UTAH DEPARTMENT OF NATURAL RESOURCES

Chairman Gosar, Ranking Member Lowenthal, and members of the Committee, thank you for the opportunity to speak to you today. My name is John Baza and I am the Director of the Utah Division of Oil, Gas and Mining within the Utah Department of Natural Resources. My division of Utah State Government (which I will refer to as "OGM") is the principal regulator for the petroleum and mineral extractive industries in the state of Utah. Our statutory charge is fostering the responsible development of Utah's mineral resources while avoiding impacts that are detrimental to the public safety and welfare, and to preserve the environment to provide subsequent use of the lands affected by such development. Because the bills being discussed today relate to oil and gas activities on Federal lands, I will focus mainly on the oil and gas regulatory processes that we perform pertaining to those activities.

The approval of drilling and production operations on Federal lands in Utah runs along two parallel tracks: one track is the Federal BLM process of reviewing and approving drilling applications for any well drilled upon a BLM mineral lease. The second track is a similar state process performed by OGM that not only includes permitting on Federal land, but on state, tribal and private land as well. This state process is conducted under state law that requires OGM to process drilling permits, and also be the repository of public data related to the drilling and production of any well within the boundaries of the state. Companies doing business in Utah often feel that this is redundant, requiring separate drilling permit approvals from both the BLM and OGM for wells drilled on Federal land in Utah.

To further compare the parallel processes, OGM has developed a history of approving most applications to drill (or APDs) in 30-90 days. Some APDs that are more complex or sensitive may take longer, but these are the exceptions and not the standard. Yet for Federal lands, BLM drilling approvals in Utah often take 12-18 months. And lest you think the BLM process is more robust, that's simply not true. I assure you that the OGM process that has been in existence in one form or another since the year 1955, is focused on achieving responsible development with due regard to public health and safety and protection of the environment, and has

met those goals with remarkable consistency. In fact, I would challenge anyone to compare wells drilled on Federal leases adjacent to those drilled on state or private leases to find any notable differences in operational conditions, land use impacts, or potential for environmental impact from those wells. So it is reasonable to ask, if outcomes are identical, then what justifies such vastly different processes to achieve the same results? I believe that thoughtful and creative thinkers could find ways to accomplish the necessary objectives of requiring safe and protective oil and gas development on all lands, including those on Federal mineral estate. As I have reviewed draft language for the bills in question today, especially the proposed bill by Representative Curtis of Utah, I feel that they are trying to accomplish those same objectives. There needs to be an element of risk potential included in the Federal drilling analysis and approval process. If wells are to be drilled in lower risk areas that have already been analyzed for environmental impact or in well-established areas of drilling and production, then let's find a more streamlined path to resource development than what exists today.

To put these concepts in perspective, let me provide you with some current statistics in Utah. There are 16,203 existing oil and gas wells in Utah. Of these, 9,222 (57 percent) are on Federal lands, 2,947 (18 percent) are tribal, and 4,034 (25 percent) are on state or private lands. For the state and private wells, OGM is the sole regulatory authority monitoring the drilling and production from those wells. Yet Federal minerals land area in Utah amounts to more than 66 percent of land acreage in the state. This suggests that there may be some "missed opportunities" for valuable yet reasonable mineral resource development on Federal lands if lengthy permit processing times could be improved.

With this in mind, I provide OGM's support for the process improvements suggested by the draft bills. I might add that there may be more streamlining concepts that could be considered as suggested by a January 16, 2018, letter from six U.S. governors (including Governor Herbert of Utah) to Secretary Zinke of the Department of the Interior. For your convenience, I have included that letter in my written testimony.

Thank you again for your time and I stand ready to answer any questions.

ATTACHMENT



January 16, 2018

The Honorable Ryan K. Zinke
 Secretary of the Interior
 U.S. Department of the Interior
 1849 C Street, NW
 Washington, DC 20240

Dear Mr. Secretary:

Western states are home to abundant and diverse wildlife, agricultural, water, cultural, and energy resources. However, efforts to conserve, manage, and develop these resources have been stymied far too often by federal bureaucracy and overreach. Because federal lands comprise much of the West, we are at a disadvantage to states east of the 100th meridian where federal land ownership accounts for less than 5 percent.

In the context of energy development, specifically our abundant oil and gas resources, federal processes managed by the Bureau of Land Management (BLM) are dearly costing our states and the federal government. Consider that due to BLM permitting delays, New Mexico fails to realize approximately \$831,000 per day in state severance tax and the federal government fails to realize approximately \$1,473,000 per day in federal royalties. Annually, that's over \$300 million lost to New Mexico and over \$500 million lost to the federal government from lands located in New Mexico alone.

Working together, and representing six western states, we have prepared the enclosed proposal, which will streamline the federal oil and gas permitting process, while protecting our irreplaceable wildlife, agricultural, water, and cultural resources.

Our proposal contains four specific streamlining opportunities:

1. A Permit by Rule process, which will allow operators to proceed with development upon submission of an administratively complete application;
2. Affirmative recognition by BLM that it will not exercise jurisdiction over surface operations situated on non-federal lands, regardless of whether the drilling operation may contact federal minerals;
3. Renewed implementation of the 2005 Energy Policy Act NEPA categorical exclusions; and
4. Delegation by the BLM of its review of drilling, completion, recompletion, and plugging and abandonment to the relevant state authority.

We are confident that our proposal will result in more efficient deployment of federal and state personnel resources, reduce unnecessary bureaucracy, continue to protect our lands and waters, and achieve healthier local and national economies.

We encourage you to review and implement this proposal and look forward to discussing further opportunities to streamline these processes with you and your staff.

Sincerely,

Susana Martinez,
Governor of New Mexico

Bill Walker,
Governor of Alaska

C.L. "Butch" Otter,
Governor of Idaho

Doug Burgum,
Governor of North Dakota

Mary Fallin,
Governor of Oklahoma

Gary R. Herbert,
Governor of Utah

Enclosures

Dr. GOSAR. Thank you, Mr. Baza. I now recognize Ms. MacGregor for her 5 minutes.
Welcome back, Kate.

STATEMENT OF KATHARINE MacGREGOR, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Ms. MACGREGOR. Thank you, Chairman Gosar, Ranking Member Lowenthal, and members of the Subcommittee. I am pleased to join you to discuss the Department's efforts and accomplishments on streamlining the Federal onshore oil and gas leasing program, as well as the draft legislative proposals before the Subcommittee.

Under President Trump and Secretary Zinke's leadership, the Department has embraced innovation, best science, and best practices to help unleash our Nation's vast domestic energy resources.

The BLM has 26 million surface acres currently under lease, including over 94,000 active wells on about 24,000 producing leases. Collectively, public lands power millions of homes and businesses, support approximately 200,000 jobs nationwide, and in Fiscal Year 2017 generated approximately \$2.2 billion in Federal revenues.

Under Secretary Zinke's commitment to energy dominance, the BLM now consistently conducts quarterly lease sales. In calendar year 2017, the BLM held 28 onshore oil and gas lease sales, an almost 30 percent increase from 2016. These sales generated about \$360 million in bonus bids, rentals, and fees, an 87 percent increase over the previous year.

The BLM is working diligently to improve its permitting process, and our efforts are beginning to show results. In calendar year 2017, the BLM approved 3,293 applications for permit to drill, or APD, on Federal and Indian lands, which generated approximately \$30.5 million in APD fees. The average APD processing time for an administratively complete application also continues to drop, now averaging 113 days, of which 50 days was spent with the BLM. We hope to further improve this figure.

We appreciate the Subcommittee's efforts to find reasonable solutions to expedite leasing and permitting on Federal lands.

Representative Pearce's categorical exclusion draft proposal revises Section 390 of the Energy Policy Act, or EAct 05, clarifies

the appropriate use of categorical exclusions, and authorizes a number of new, common-sense CXs, as we call them. This includes codifying existing ones that are already being used by other agencies right now, today. CXs can be an effective tool for reducing delays and costs associated with permitting, especially in instances where operators are improving or streamlining their operations and have minimal environmental impact to their existing footprint.

The Department notes that a CX is not an exemption or a waiver of NEPA review, but instead is a tool within the NEPA review process. In many cases, it is likely that NEPA analysis on a DOI project has occurred at least twice, providing both sufficient environmental analysis and multiple opportunities for public engagement.

Under Representative Pearce's permitting on non-Federal land draft proposal, operators would no longer submit a Federal APD if there is less than a 50 percent Federal mineral interest and zero Federal surface disturbance. This would focus BLM operations on where the estate is more fully within its jurisdiction, update Federal authorities to catch up with directional drilling technology, and it would reduce duplicative state and Federal permit requirements. We appreciate the inclusion of language that would maintain the Department's authority to audit and invoke civil penalties for any misreported production.

Finally, the cost recovery draft proposal directs the Secretary to recover costs associated with processing administrative protests received for leases, rights-of-way, or APDs filed. In Fiscal Year 2012, 17 percent of BLM lease sale parcels were protested. By 2017, that number grew to 88 percent.

To date, many BLM state offices are receiving protests on every oil and gas parcel offered. And in some cases, the protests are hundreds of pages, as seen right here. This one is 1,500 pages. This protest alone resulted in an 8-month delay, this protest of \$70 million in revenue to the state of New Mexico. The protest requires significant BLM staff time, and in many cases provide little to no tangible environmental benefits.

The uptick in protests seem aimed at disrupting a lease sale, which is not the intent of the protest period.

The potential tools provided by these draft bills will help the BLM significantly reduce permit times and focus on complex development scenarios.

The drafts also acknowledge innovative development technologies that have reduced surface impacts nationwide, and help to foster additional development on public lands. In turn, this could contribute to increased revenues and energy production to meet our Nation's energy needs.

Thank you for the opportunity to present this testimony. I would be glad to answer any of your questions.

[The prepared statement of Ms. MacGregor follows:]

PREPARED STATEMENT OF KATHARINE MACGREGOR, PRINCIPAL DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Chairman Gosar, Ranking Member Lowenthal, and members of the Subcommittee, I am pleased to join you today to discuss the Department's efforts and accomplishments about streamlining the Federal onshore oil and gas leasing and permitting processes to address backlogs and inefficiencies. The discussion

drafts the Subcommittee is considering today have the potential to further bolster our work to streamline administrative processes, reduce duplicative actions, and eliminate redundant procedural reviews, and we look forward to working with the Committee as these bills are refined. Our shared goals are to reduce burdens on industry and provide savings to the American taxpayers without sacrificing environmental protections.

While all potentially affected Federal agencies have not had sufficient time to meaningfully consider the details in the four discussion drafts, the Department supports the goals of the discussion drafts, to help modernize the Bureau of Land Management's (BLM) application of NEPA reviews for leasing, permitting and other actions associated with Federal oil and gas development. We appreciate the Committee's focus on finding reasonable solutions to expedite leasing and permitting on Federal lands. Under Secretary Zinke's leadership, the BLM has made it a top priority to unleash the vast domestic energy reserves on public lands in pursuit of America's energy dominance. By reviewing and streamlining oil and gas regulations and policies that encumber development, the Department is helping to lower energy costs, create jobs, and keep our economy strong for generations to come.

PUBLIC LANDS' CONTRIBUTION TO ENERGY DOMINANCE

The BLM manages about 245 million surface acres and 700 million subsurface acres, located primarily in 12 western states. The BLM administers this diverse portfolio of lands on behalf of the American people, in coordination with the U.S. Department of Agriculture's Forest Service, as part of the agency's multiple-use mission—including energy and mineral development, livestock grazing, timber production, recreation, and conservation, among others. Onshore oil and gas production on BLM-managed public lands is a significant part of this strategy and makes an essential contribution to the Nation's energy supply—playing a significant role in supporting jobs for hardworking Americans.

The BLM has 26 million surface acres currently under lease for oil and gas development, including over 94,000 active wells on about 24,000 producing leases. The BLM oversees onshore oil and gas development on Federal lands and lands held in trust for the benefit of various tribes. Collectively, these lands contain world-class deposits of energy and mineral resources, which power millions of homes and businesses and support the broader economy. Sales of onshore oil and gas from Federal and Indian lands accounted for approximately 5.3 percent of all oil and 9.3 percent of all natural gas production in the United States in Fiscal Year (FY) 2017. The BLM's most recent economic study estimates the Federal onshore oil and natural gas program alone provides approximately \$42 billion in economic output and supported approximately 200,000 jobs nationwide.

Further, the BLM is a key revenue producer for Federal and state governments by providing a significant non-tax source of funding to state and Federal treasuries, and is an important economic driver for local communities across the country. In FY 2017, production from Federal lands generated approximately \$2.2 billion in Federal royalties, rental payments and bonus bids. Roughly 48 percent of this revenue is shared with the state where the oil and gas activity is occurring, while the rest goes to the U.S. Treasury. States and counties in turn often use these funds to support the building and maintaining of roads, schools, and other important community needs.

Under Secretary Zinke's commitment to the advancement of energy dominance, the BLM now consistently conducts quarterly lease sales. In calendar year 2017, the BLM held 28 onshore oil and gas lease sales. This is almost a 30 percent increase from the 20 onshore oil and gas lease sales held in 2016. These sales generated about \$360 million in bonus bids, rentals and fees—an 87 percent increase over the previous year's results of \$193 million. Among these sales, which together were the highest in nearly a decade, rights to a total of 949 parcels, covering 792,823 acres, were sold.

The BLM is also working diligently to improve its permitting process and our efforts are generating real results. In calendar year (CY) 2017, the BLM approved 3,293 Applications for Permit to Drill (APDs) on Federal and Indian lands. By prioritizing permitting, modernizing its databases, and shifting resources across the BLM offices, the average APD processing time for an administratively complete application continues to drop—now averaging 113 days of which 50 days was spent with the BLM. And it does not stop there. With the Department managing 1 in every 5 acres of land in the United States, the BLM also has a tremendous role in permitting pipelines, power lines and right-of-ways (ROWs). To date, the BLM has approved roughly 360,000 miles of pipeline ROWs on public lands and approximately 10,000 miles of pipelines ROWs on other Federal agency land.

PATH TO AMERICAN ENERGY DOMINANCE

The Trump administration has made responsible energy development at the Department a priority. Executive Order (E.O.) 13783 (Promoting Energy Independence and Economic Growth) and E.O. 13795 (Implementing an America-First Offshore Energy Strategy) have together called upon the Department, and other Federal agencies, to increase access to and reduce burdens on energy development on public lands. E.O. 13807 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects) ignited an Administration-wide assessment as to how best to address inefficiencies in current infrastructure project decisions that delay investments, decrease job creation, and are costly to the American taxpayer. By utilizing best science, best practices, and harnessing innovative technologies, the BLM encourages investment on public lands to expedite and increase domestic energy development, promote job growth, and keep energy prices low for American families and businesses.

As a result, the Department has been proactive in these efforts, specifically focusing on environmental reviews and permitting authorizations for energy and infrastructure projects. One such example is Secretarial Order (S.O.) 3355 (Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807), which provides a number of internal DOI directives to streamline environmental reviews, including setting page and time limits on all NEPA analysis.

Secretary Zinke also issued four S.O.s. to reduce unnecessary and burdensome regulations while maintaining environmental protections and public health. The most overarching one is S.O. 3349 (American Energy Independence), which directed bureaus to examine specific actions impacting oil and gas development, and any other actions affecting other energy development. S.O. 3354 (Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program) directed the BLM to hold quarterly oil and gas lease sales, and to identify ways to promote the exploration and development of Federal onshore oil and gas and solid mineral resources.

In addition, on May 31, 2017, Secretary Zinke signed S.O. 3352 to jump-start Alaskan energy production in the National Petroleum Reserve—Alaska (NPR-A) and update resource assessments for areas of the North Slope, helping to unleash Alaska's energy potential. As a result, on December 22, the Secretary released an updated resources assessment for the NPR-A, which estimates technically recoverable oil and gas resources to be 8.7 billion barrels of oil and 25 trillion cubic feet of natural gas. Finally, most recently, the Department issued S.O. 3360 (Rescinding Authorities Inconsistent with Secretary's Order 3349, American Energy Independence) which rescinded several reports and manuals that were inconsistent with current policy.

In response to the Secretarial Orders, the BLM reviewed all regulations related to domestic oil and natural gas development on public lands—resulting in several rulemaking and policy changes. In December 2017, the BLM sought to suspend or delay certain requirements contained in its 2016 final Waste Prevention Rule as part of the goal of reducing the burden of Federal regulations on energy development. The suspension and delay stemmed from the BLM's determination that immediate implementation of some parts of these rules would unnecessarily burden energy producers, especially those operators of marginal or low-producing wells. Shortly thereafter in February 2018, the BLM announced a proposal to revise the 2016 final Waste Prevention Rule, and is currently analyzing the comments it received from the public. Further, in December 2017, the BLM published a final rule to rescind the 2015 final rule on hydraulic fracturing after finding 32 of the 32 states with Federal oil and gas leases have regulations that address hydraulic fracturing. Finally, in January 2018, the BLM issued Instructional Memorandum 2018-034 (Updating Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews). This new policy simplifies and streamlines the leasing process, expedites offering of lands for lease, and ensures quarterly oil and gas lease sales are held.

Furthermore, the BLM is improving policies to minimize negative impacts on wildlife during energy, transmission, and infrastructure development to use the best available science and technologies. We believe the Department's efforts to accelerate and streamline NEPA compliance will also help continue to pave the path for American energy dominance.

ONSHORE OIL & GAS LEGISLATIVE DISCUSSION DRAFTS

The Discussion Drafts the Subcommittee considers at this hearing would expand the use of categorical exclusions for certain oil and gas operations, revise processes for permitting on non-Federal surface estate when the subsurface mineral estate is less than half Federal, and authorize cost recovery for lease protests. While we have

not yet fully assessed the potential impacts of these changes and will need time to coordinate with other affected agencies, I will outline some of our initial thoughts on the bills.

Expanding Use of Categorical Exclusions (The CX Draft)

The CX Draft revises Section 390 of the Energy Policy Act of 2005 (EPA 2005) to clarify the appropriate use of categorical exclusions (CXs) from further NEPA analysis. The CX Draft also authorizes a number of new CXs to improve processing of not only APDs, but also sundry notices, lease reinstatements, ROW applications, and subsequent modification applications.

The Department supports efforts to streamline the environmental analysis process associated with energy development, and believes CXs can be an effective tool for reducing delays and costs associated with permitting. The Department is fully committed to fulfilling NEPA responsibilities, but recognizes that some NEPA implementation has become an overly complex paperwork exercise, rather than a tool used to adopt sound decisions based on an informed understanding of environmental consequences as originally intended by Congress.

We appreciate the sponsor's efforts to work with the BLM in tandem to help identify opportunities to further increase efficiencies associated with energy development. The EPA 2005 authorized certain CXs for activities conducted pursuant to the Mineral Leasing Act for the purposes of oil and gas exploration or development. The use of statutory CXs has helped reduce unnecessary paperwork and delays, thereby better utilizing the agency's limited resources. The Department notes that a CX is not an exemption or waiver of NEPA review, but instead is a tool to be used to help fulfill the NEPA review process in a more efficient manner. When used appropriately, CXs result in efficient and streamlined approval of agency actions that, individually or cumulatively, do not have significant impacts to the natural environment.

By further clarifying the situations where it is appropriate to use a CX and by providing consistent direction and authorization of when the BLM can use this tool, the CX Draft appears to respond to concerns identified by the U.S. Government Accountability Office. For example, the lack of clarity on key elements of Section 390 of EPA 2005 led to differing interpretations, inconsistent application of the Section 390 CXs among BLM field offices, and resulted in increased litigation. The Department supports clarifying that in instances where the BLM has already done site-specific NEPA and does not significantly deviate from that NEPA analysis, the bureau's requirements would be fulfilled.

The Department also appreciates the efforts of Congress to recognize that there are many instances where operators have opportunities to improve and streamline their operations in ways that would have minimal environmental impact from their existing footprint. An example of this includes adding new wells to an existing pad or needing approvals for additional infrastructure within an existing footprint. Providing the BLM with tools like these CXs, responds directly to stakeholders' feedback that development on public lands has become increasingly onerous and cost prohibitive.

Permitting for Non-Federal Surface Land (Permitting on Non-Federal Land Draft)

The Permitting on Non-Federal Land Draft eliminates the requirement that an operator submit to the BLM a Federal APD in instances where surface drilling and production operations and facilities are located on non-Federal surface estate if there is less than a 50 percent Federal mineral interest. Under the bill, the operator would be required to provide the Secretary of the Interior a copy of the state approved drilling permit, and NEPA, the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA) requirements for the exploration, development or production of oil and gas would no longer apply. The Permitting on Non-Federal Land Draft also specifies that nothing in the bill alters the amount of royalties due the United States from production of oil and gas or the Secretary's authority to conduct audits and collect civil penalties.

The BLM appreciates the goal of this draft bill to focus the BLM's review of Federal actions to Federal lands. The Permitting on Non-Federal Land Draft bill would no longer require the BLM to analyze surface impacts to private lands.

The BLM frequently encounters two different situations related to the development of Federal oil and gas leases involving private lands. First are the split estate operations where the drill site is located on non-Federal surface lands overlying the Federal oil and gas minerals. Second, as technology has increased, operations have allowed for development from predominantly private surface to private minerals, and only producing a marginal amount Federally-owned minerals. In both instances no Federal surface is impacted, yet, under current law, the BLM must require an

APD for the Federal mineral production. For these APDs, the BLM still fulfils requirements of NEPA, NHPA, and ESA.

We appreciate the sponsor's efforts to reduce redundant state and Federal permit requirements and to eliminate uncertainty related to these APD and environmental review requirements as directional drilling technology has significantly reduced surface impacts. The Department recognizes that in instances where there is minimal Federal interest, it may not be necessary for the BLM to conduct NEPA and ESA review and for NHPA consultation to be triggered. In these instances, the Permitting on Non-Federal Land draft bill would explicitly state that analysis and consultation on non-Federal surface would not be required. The bill could allow the Department to better use its limited resources while decreasing unnecessary analysis on non-Federal split estate lands.

These changes could help reduce burdens on industry and the BLM by making the planning and NEPA process more efficient and less expensive, and could allow the BLM to focus on surface and downhole implications where the estate is more fully within its jurisdiction. We also appreciate the sponsor's inclusion of language intended to maintain the Department's authority—via the Office of Natural Resources Revenue—to audit and invoke penalties for any misreported production under Federal Oil & Gas Royalty Management Act, in order to ensure that resources are properly accounted for and the American taxpayer is protected.

Cost Recovery-Eliminating Superfluous Protests (Cost Recovery Draft)

The Cost Recovery Draft directs the Secretary to recover costs associated with processing an administrative protest received for leases, ROWs, or APDs filed. The fees collected would help the BLM recover considerable costs when processing significant numbers of protests.

The BLM is committed to being a good neighbor that is responsible and accountable to our stakeholders. This includes providing the public ample opportunity to participate in the Federal decision-making process. Current BLM regulations, however, allow any party to file a protest on a BLM decision, including on a land use plan or on a subsequent decision to include a parcel in an oil and gas lease sale. While historically protests addressed parcel-specific issues unique to the parcel in question, in recent years, the number and reasons for protesting every parcel in the sale has increased and become broad-based, non-parcel specific, and a method of disrupting the offering of parcels at competitive sale. In FY 2017, 88 percent of parcels offered for lease were protested, compared to in FY 2012, when only 17 percent of parcels received protests. The number of parcels offered on the original sale notice decreased from 2,247 in FY 2012 to 1,427 in FY 2017. To date, many BLM state offices are receiving protests on every oil and gas parcel offered through the Competitive Lease Sale process.

While the BLM can still hold a lease sale for parcels with pending protests, the protest must be resolved prior to the lease being issued. This in turn can delay payment of the state's share of the bonus bids—which occurred most recently in the state of New Mexico. In September 2016, BLM hosted a record-setting lease sale generating \$145 million in revenue, of which approximately \$70 million was owed to the state under the Mineral Leasing Act revenue sharing provision. As a result of the number of protested parcels and the length of time it took to resolve all protests, the disbursement to the state of New Mexico was delayed by approximately 250 days.

This uptick in these protests and resulting use of BLM resources to respond is a burden on oil and natural gas development on public lands. The cost recovery draft may help reduce non-parcel specific protests by encouraging interested parties to more carefully consider protests, and allow the BLM to conduct business in a more efficient manner. The BLM appreciates the Subcommittee's work to address this issue.

CONCLUSION

The Department remains committed to promoting responsible oil and gas production that helps create and sustain jobs, promotes a robust economy, and contributes to America's energy dominance, while also protecting consumers, public health, and sensitive public land resources and uses. The BLM's oil and gas leasing program is a critical component of the Nation's energy infrastructure and is an important Federal revenue generator. The Department supports the goals of the four discussion drafts to help streamline the BLM's permitting processes and to alleviate administrative burdens on private landowners by reducing unnecessary environmental analyses on non-Federal surface estate. Thank you for the opportunity to present this testimony. I will be glad to answer any questions.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. KATE MACGREGOR, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Ms. MacGregor did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Rep. Lowenthal

Question 1. What is the cost for the Bureau of Land Management to process an expression of interest (EOI) for an oil and gas lease from acceptance of the EOI to the date the parcel is offered? How many staff hours are involved in each phase of the process?

Question 2. Please describe the precise steps that are taken under current BLM policy for an Application for Permit to Drill (APD) that will receive a categorical exclusion (CX) under Section 390 of the Energy Policy Act of 2005 (for each of the three CXs that relate to oil and gas drilling).

Question 3. What steps are taken to inform, and solicit comments from, the National Park Service for leases or APDs that may potentially impact units of the National Park System? How would those steps change if the Department moves to common regional boundaries as envisioned in the FY19 DOI Budget? Is the National Park Service notified of APDs that will be processed using a Section 390 CX?

Question 4. Many Resource Management Plans (RMPs) are out of date, written in a time before hydraulic fracturing and without the foresight to contemplate domestic drilling on a scale it is now occurring. What is the plan for undertaking new environmental review processes for out-of-date RMPs? Given the Congressional Review Act elimination of the Resources Management Planning rule (81 FR 89580), what steps is BLM taking, or planning on taking, in order to improve the process of updating RMPs?

Question 5. About a dozen of the oil and gas lease parcels in the September 2018 lease sale in the BLM New Mexico (NM) Carlsbad Field Office (FO) are in areas identified by the Federal Government as having critical or high cave-karst potential in the areas adjacent to Carlsbad Caverns National Park. Can you please outline the actions the BLM is taking as part of this lease sale to protect sensitive and connected cave/karst systems under the area?

Question 6. A March 2018 lease sale in the BLM NM Farmington FO was deferred to allow for better study of the precious archaeological and cultural resources in the area around Chaco Culture National Historic Park. Can you please update us on the status of that effort and outline opportunities for public comment and information during this process?

Question 7. Please provide the most current list of Entities in Noncompliance with Section 17(g) of the Mineral Leasing Act.

Question 8. Since Fiscal Year 2002, how many protests, broken down by year, resulted in modifications and/or suspensions of parcels?

Questions Submitted by Rep. Pearce

Question 1. Protest Funding

1a. Does the BLM currently charge protesters in order to process the protest?

1b. If not, where does the money to process these permits come from?

1c. How long did it take and how much did it cost to process the protest made to the September 2016 lease sale in New Mexico discussed in the hearing?

Question 2. Carlsbad Field Office

2a. What was the average number of staffers in the BLM's Carlsbad Field Office throughout 2017 and up to this point in 2018?

2b. How many APDs were received by the BLM Carlsbad office in 2017 and 2018?

2c. How many APDs were processed in 2017 and 2018? Please provide monthly breakdowns if possible.

Question 3. AFMSS II

3a. How much was spent on developing AFMSS II by the BLM?

3b. What is the BLM doing to ensure that it works for the Carlsbad Field Office?

Question 4. Non-Federal Surface

4a. How many APDs currently awaiting approval are for wells on non-Federal surface that also affect less than 50 percent Federal minerals?

Dr. GOSAR. Thanks, Ms. MacGregor. I thank the panel for their testimony.

Reminding the members of the Committee that Rule 3(d) imposes a 5-minute limit on the questions, I will now recognize the gentleman from New Mexico, Mr. Pearce, for his 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate you yielding first to me. I have an amendment on the Floor we are juggling, so thank you.

Ms. MacGregor, as I read the testimony of Mr. Willis, he makes a statement there that they cause great concern because they will bypass the local BLM office's capabilities to really review. I just wondered if you would like to address that particular insight that he offers there.

Ms. MACGREGOR. That this proposal would bypass our ability?

Mr. PEARCE. Yes, the statement is that it is not going to be good for local communities, it seeks to end a practice of local BLM decision making.

Ms. MACGREGOR. Sure. I think it is important, as I pointed out in my testimony, the fact that a categorical exclusion would somehow prevent NEPA from occurring, environmental analysis, local community input, is not true.

During the land management process, when we consider multiple uses for those Federal lands, we do NEPA alongside that. That includes a reasonable foreseeable development and also has multiple opportunities for public comment in that process.

So, in many ways, BLM will still be doing NEPA on all of these acres prior to any action.

Mr. PEARCE. What is the backlog from that Carlsbad office? Do you happen to know that right now, approximately?

Ms. MACGREGOR. I do have that. I believe it is about 300 APDs, but I could pull that up for you right now.

Mr. PEARCE. It may be closer to 800. That is OK. The idea, though, is that it is taking a tremendously long time.

The Permian Basin sits right there in Texas, crossing the border into New Mexico. And just so that our other witness might have an understanding of the damage that it is doing, in Texas they don't have quite the quality of oil, they don't have quite the quantity of oil that we do in the Permian Basin right there, right now. So, there are 380 rigs running right across the border. You can see them running from New Mexico. We have roughly 80 working in New Mexico. Each one of those penalizes jobs, revenues—and you heard the testimony from Ms. MacGregor that probably the cost to New Mexico is \$70 million on one well.

That really is what we are trying to drive at. This area has multiple locations. It is not like it has never been touched before. We have run multiple studies. Many times the wells are separated by a half-mile, maybe a quarter of a mile. So, it is actually just a very common-sense problem saying we have already run the EIS, we

have run the NEPA studies on all these other locations. If we have one close enough, that maybe we should lower the backlog just a bit, maybe we should let New Mexico experience the growth of its economy that is there, ready to happen, except for the Federal rules.

It is a huge question for us, and one that we are trying to deal with.

The other bill that we have simply makes the assertion that if the Federal Government owns less than 50 percent of the mineral rights, that maybe we don't need an application for permit to drill. Let's let the state rules work, let's let the private rules work, whichever one that they are sharing with, so these bills really are very common sense, trying to cut back the bureaucracy to allow some of the efficiencies that we might be able to accommodate.

Mr. McQueen, I don't know if you have done an in-depth study. Have you been able to assess pretty much the cost in New Mexico of these regulations that are standing in the way of drilling projects moving forward in New Mexico?

Mr. McQUEEN. Mr. Chairman and Representative, we have looked at those numbers, and I offered those numbers a bit earlier in my testimony. But we estimate the impact of these backlogged permits in the Carlsbad office to represent about \$1.3 billion per year to the Federal Government and about \$700 million, \$713 million, to the state of New Mexico.

Mr. PEARCE. So, \$700 million to the state of New Mexico. Again, keep in mind that their budget is around \$6 billion, so you are talking a very significant impact on a state that really struggles for revenue.

Again, these two bills are designed not to bypass anything, not to cause great destruction in the environment, but to be practical, common-sense approaches to how do we reach the economic potential of a state where that potential is ready to happen. It is just that the rules lie in the way of making it possible.

I have heard estimates of as high as \$1 million per rig, just in daily income to the state, just by the tax basis of all the crews that are working, all the services that are provided. So, again, you are talking a huge economic impact to a state that typically struggles for revenue. So, these bills, to me, made common sense that we would introduce them, and we would urge that the Committee look favorably on those.

With that, Mr. Chairman, I yield back.

Dr. GOSAR. I thank the gentleman from New Mexico. The gentleman from California is recognized.

You are going to get a little extra time, so don't worry.

Dr. LOWENTHAL. As it should be.

Dr. GOSAR. The timer was asleep here, so I am sorry.

Dr. LOWENTHAL. That is quite all right.

Mr. Willis, I want to follow up on what you spoke about before. Why is it so important to involve the public in decisions about oil and gas development? You began to talk about that, but tell me, why is it so important that they be part of this process?

Mr. WILLIS. Basically, because none of us is as smart as all of us, and when we get people to the table and working through the process, projects get better.

Dr. LOWENTHAL. OK, so they may raise issues that the companies or BLM may not even think about, that it just improves the process is what you are saying.

Mr. WILLIS. Right. They frequently have new information brought forward that the agency isn't aware of, yes.

Dr. LOWENTHAL. Thank you, Mr. Willis.

Ms. MacGregor, we sent you a questionnaire for the record last year asking for an office-by-office breakdown of the number of drilling permits approved but unused as of September 30, 2016. Over 9 months later, you responded with a number of permits approved, but only in Fiscal Year 2016 that hadn't been used.

You know permits are good for 4 years, and we asked you for the number of unused permits as of 2016. So, that response really didn't help us, or just a little bit, because it really only gave 1 year.

Let me ask you a two-part question. Can you tell me the total number of approved permits that haven't been used as of the end of Fiscal Year 2017?

Ms. MACGREGOR. I can tell you that the BLM estimates, as of May 31, 2018, there were 2,606 pending APDs and 7,267 approved APDs at that time that had not yet been drilled.

Dr. LOWENTHAL. All right, so approximately, as I said earlier, there are 8,000 permits that have been approved that are just sitting there, about 8,000, which is the lowest number approved that we have had in almost a decade. Is that not true?

Ms. MACGREGOR. I am sorry, the lowest number of approved APDs?

Dr. LOWENTHAL. The number that are pending approval, you know, the number that are out there that are pending approval?

Ms. MACGREGOR. The total number today that are pending approval are 2,603.

Dr. LOWENTHAL. And that is the lowest in a decade.

Ms. MACGREGOR. I don't have the annual numbers right in front of me, but I could get that for you.

Dr. LOWENTHAL. But that is a low number if you look at it over the last decade.

Ms. MACGREGOR. I would have to look at the numbers.

Dr. LOWENTHAL. All right, we would like to hear that number.

And, also, will you provide the Committee with the breakdown of all the permits that have been approved as of the end of Fiscal Year 2017 by field office? Can you provide that within a short period of time, say 30 days?

Ms. MACGREGOR. I believe we can do that.

Dr. LOWENTHAL. That would be very helpful, to follow that up. Thank you.

Ms. MACGREGOR. I do have some stats, if you want them. In 2017, over \$5 million was received by the BLM and we were able to retain from expired APDs.

Dr. LOWENTHAL. Thank you. We look forward to seeing that.

Mr. Willis, I want to return. Do you think categorical exclusions are appropriate for oil and gas drilling? And what is the impact of eliminating the extraordinary circumstances review?

Mr. WILLIS. I don't think CXs are appropriate for something that has as much potential to be a long-term, irreversible, irretrievable

commitment of resources as a drilling operation and since occupied the land for upwards of 50 years.

The Council on Environmental Quality guidance on CXs say that they use those to identify categories of actions that don't have potential to cause significant effects, and that certainly is not the description of oil and gas development.

And in terms of extraordinary circumstances, that is a process that in BLM CXs, everything that is proposed to be authorized under a CX, BLM looks at to make sure that there isn't anything that is special, unique, or unusual that would make the CX not appropriate in that case.

Dr. LOWENTHAL. Thank you. So, it is fair to say that if BLM doesn't look at extraordinary circumstances, there is more of an analysis in installing a stop sign than in drilling an oil well.

Mr. WILLIS. That would be correct.

Dr. LOWENTHAL. Thank you.

Governor Martinez and Secretary McQueen, in both of your written testimonies, you mention the 800 pending permit applications in New Mexico, and you both mentioned how much money this is costing the state. That makes it sound like companies are completely unable to get permits, and are sitting around waiting for them.

But in my understanding, the data doesn't support that. In the beginning of Fiscal Year 2016, drillers in New Mexico held nearly 1,700 approved permits that they hadn't already used—exactly 1,682. Then BLM approved another 891 drilling permits that year; 618 of them, over two-thirds, went unused. So, I am not too sympathetic about the 800 pending permits when there are roughly twice that many approved ones that are already out there just waiting to be used.

Does New Mexico receive any revenue from approved permits that aren't being used?

Mr. MCQUEEN. Mr. Chairman and Representative Lowenthal, let me start with your last question first.

New Mexico does not receive any revenue for unused Federal permits. I will say there are many reasons for having unused permit inventory among oil and gas companies. New Mexico, for example, has two predominant producing basins, the San Juan Basin in the northwest and the Permian in the southeast. And because of poor natural gas prices, we have seen the drilling count in the San Juan Basin go from as high as 45 rigs to 3 rigs today.

So, companies reallocate resources based on a whole number of factors, including product prices. In the southeast, in the Permian Basin, we have seen a number of companies, new entrances, new acquisitions by companies in the southeast. Each company has their own idea of the best place to drill. So—

Dr. LOWENTHAL. Let me go on, and I will finish up with the last part of the question.

Another interesting piece of data is that in Fiscal Year 2016, companies in New Mexico drilled 297 wells that they didn't complete. That is, they drilled a hole, but didn't produce any oil and gas from it. Presumably, they are sitting on many of these, waiting for higher prices. So, then the same question is, does New Mexico

receive any revenue from wells that are drilled but not producing any oil and gas?

Mr. MCQUEEN. Mr. Chairman and Representative Lowenthal, New Mexico does not receive revenue on oil and gas wells until production begins. But, again, back in 2016, the reason for not completing, or at least deferring completions on those wells, was all related to the price of crude oil.

Dr. LOWENTHAL. Thank you. So, I think it is unfair to blame the BLM for costing the state hundreds of millions of dollars, when that is clearly not the issue here.

Thank you, and I yield back.

Dr. GOSAR. I thank the gentleman. We may now have the question answered for when will time stand still. It was 4:32, and it was 10 seconds before that. So, that clock may not be working, so you will get your cue from me.

I will now go to Mr. Lamborn from Colorado for his 5 minutes.

Mr. LAMBORN. Thank you, and thank you all for being here.

Ms. MacGregor, it is good to see you again.

Governor, thank you for being here.

And you have all traveled, and I appreciate that.

One of the bills, in my opinion, would do a real common-sense thing. It says that you don't have to do an APD, you can do a notification if, for instance, it is in an existing field which had already been assessed for environmental impact and so on.

Does anyone here on this panel think that you should have to go through the whole process over again in an existing field?

Governor MARTINEZ. No, I do not believe that it is necessary. That is what causes the delays, causes the inability for the industry to grow, causes the delay for people to be hired at good-paying jobs.

You can have an 18-year-old who can earn \$80,000 with a CDL license in the oil and gas industry and be able to support their families.

So, to do something again when it already exists is simply duplication and a bureaucratic process that is unnecessary.

Mr. LAMBORN. Thank you.

Mr. Willis?

Mr. WILLIS. I would like to respectfully disagree. I have worked on a number of large-field NEPA projects, and it depends on the degree of detail. If you have examined all the well locations and looked at those, it probably doesn't make a lot of sense to run each APD through full-on NEPA. But if you have a field that was done more programmatically, and someone decides they want to pop a well out there somewhere within the 5-mile radius of another well, and that location has not been looked at site-specifically, it may well have some issues.

Mr. LAMBORN. OK, thank you. I want to build on a question that was asked.

Mr. McQueen, you were starting to answer this a few minutes ago, and that is if an oil or gas company has in its inventory permits that it is not actively drilling on, what might be some of the explanations for that situation?

Mr. MCQUEEN. Mr. Chairman and Representative, there are a number of explanations for that, but each time an operator drills

a well, they learn more about the geology, they learn more about the rock structure, they learn more about where the better placement of these horizontal laterals should be made.

So, each time these operators increase their knowledge base, they are re-evaluating every opportunity to drill. And in some cases they find that their first choice for drilling a well may not be the best choice. That is part of the reason that operators go back and re-permit wells in different places.

There are also other logistical issues related to oil and gas drilling, and operators many times can streamline their operations by taking advantage of logistical opportunities.

For example, if you have a rig drilling in a field and you have six or eight other locations adjacent to that location, it is much more economic to move that rig to those locations and drill them, rather than moving the rig maybe 100 miles to a location where you do have a permit. So, there is a need for flexibility, and there is a need for inventory, for operators in looking at drilling oil and gas wells.

Mr. LAMBORN. I sometimes have gotten the impression that people that don't understand the situation assume that if there are unused permits in the inventories out there, then it really doesn't matter if there are huge delays going on, because it is not that big of a deal, they must not care that much if they are sitting on unused permits, or it is not that important from a business perspective, or the government has already done its job and so slow-downs don't really matter.

Would you agree with that line of reasoning?

Mr. MCQUEEN. Representative, I would agree with that. Unless you have worked in the oil and gas business, it is really difficult to understand the complex logistics that are required in order to pull off continued operations.

Back to your earlier question, another reason that operators often elect to change locations is the availability of infrastructure. In New Mexico, we have been trying to do what we can to encourage operators to deliver their associated natural gas to pipeline for sales. So, again, operators are looking at locations that are closer to existing infrastructure or anticipated infrastructure in order to get their products sold.

Mr. LAMBORN. Thank you. Thank you all for being here.

Mr. Chairman, I yield back.

Dr. GOSAR. I thank the gentleman from Colorado. The gentleman from Virginia, Mr. Beyer, is recognized for 5 minutes.

Mr. BEYER. Yes, thank you, Mr. Chairman, very much. And again, thank you all for coming.

Principal Deputy Assistant Secretary MacGregor, Mr. Willis wrote that the CX provisions in these bills have a major flaw, a logical flaw, that the 5-mile radius, when you do πR^2 , it ends up being 78 square miles where BLM wouldn't have any opportunity to review critical areas and resources, and the public not having any say in the matter.

When you think of a 5-mile radius, you don't think about it being 78 square miles. And he points out that Tavaputs Plateau, which is a plateau highly dissected by deep canyons—how do you answer

his objection that 78 square miles is far too large to qualify for a categorical exclusion?

Ms. MACGREGOR. I believe, in referring to the 5-mile radius, that is in the Curtis bill?

Mr. BEYER. Our audience is saying yes. Yes.

Ms. MACGREGOR. OK. We do not have formal comment on that legislation, the draft bill, given that we received it on Friday, but we are more than willing to work with the Committee on every step, as required, and information that is needed.

I will say, when it comes to a categorical exclusion—and again, to debunk the myth that somehow NEPA is not being done at all—when we do our resource management planning through FLPMA, we are required to do quite a bit of public comment, work with our local communities, working with our governor's office—we have a pending one in New Mexico right now that is pretty important.

And on top of that, we do an EIS related to that. And, again, in that EIS, that environmental impact statement, to adhere to NEPA we evaluate quite a bit of different impacts to those properties and to all of that acreage, including promulgating a reasonable foreseeable development scenario that in some cases accounts for pad size of development and other—

Mr. BEYER. Let me move on. The Governor, in her opening statement, talked about the average of 250 days and the 800 permanent backlog, which, of course, makes BLM look really bad right out of the box.

Yet, you talked about all the work you are doing. You have it down to 113 days, 115 days, and only 50 days at BLM.

We have reduced it by 80 percent already with your leadership. Do we actually need this legislation? Or are you going to be able to do something very efficient just with better management?

Ms. MACGREGOR. You are so kind, sir. By statute we are required to do these APDs in 30 days. Federal law is telling us to do these in 30 days. Sometimes we cannot even do the NEPA in 30 days, so we aspire to, working with our state partners, and in accordance with the Secretary's priority to restore trust with a lot of our local governments who are concerned about our lags in permitting, potentially restricting rural economic development, we are trying to improve our process.

I don't think it is good enough. We are going to try to do better.

Mr. BEYER. Thank you very much.

Mr. Willis, one of the interesting pieces is this notion of a no Federal permit required for production activities that are on non-Federal surfaces. So, the drill is going on a non-Federal surface, and with long horizontal shafts is accessing Federal minerals.

Why does this not make sense? What is the public argument that if deep down, thousands of feet, you are accessing or unitizing Federal minerals, it should all be part of the NEPA process, or subject to NEPA review, et cetera?

Mr. WILLIS. Well, for starters, the NEPA statute isn't tied to land ownership as to what triggers NEPA. What triggers NEPA is a Federal action. And I would hope that the leasing and production of Federal minerals is a Federal action with some Federal oversight.

The other thing is that even though it is taking place down a hole, that doesn't mean that there isn't potential to be affecting groundwater aquifers, surface water, all sorts of other things that is in the interest of the Federal Government to keep an eye on.

So, I would say, based on being a Federal action, and the resources at risk, that it is reasonable for the Federal Government to have a say in the permitting on that.

Mr. BEYER. I only have 30 seconds left. Can you talk about the unintended consequence of charging a fee for those who protest without anonymity, but allowing anyone to apply for a permit anonymously with no fee?

Mr. WILLIS. Not quite sure how to answer that one, other than the fact that the process appears to be fundamentally unfair, and the whole protest fee—we don't routinely charge people a fee for asking the Federal Government to correct its mistakes.

Mr. BEYER. It was interesting, your comment about actually incentivizing the Federal Government to make mistakes so that they can generate revenue.

Mr. Chairman, I will yield back.

Dr. GOSAR. For clarification, if you go to page 3 of the draft, line 6, the question is very outlined: "a developed field, where there are existing oil and gas wells within a 5-mile radius and for which an approved land use plan or environmental review was prepared within the last 10 years under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) that analyzed such drilling operations as a reasonably foreseeable activity." So, that is defined.

And also, it is for surface disturbances of less than 10 acres. So, just for clarification on your original point, those are a part of that.

The gentlewoman from Wyoming is recognized for 5 minutes.

Ms. Cheney.

Ms. CHENEY. Thank you very much, Mr. Chairman. Thank you to all of our witnesses for being here today. I am in support of all of these bills. I want to thank my colleagues, Mr. Curtis and Mr. Pearce, in particular. I think that these proposals really provide common-sense answers to help to streamline this process and, frankly, help to clarify what the law is and how we ought to be operating.

Governor Martinez, thank you, also. I was particularly struck by your testimony and the simplicity of it, in terms of explaining the real-world impact of the red tape that we are facing. And I would commend it to anybody who hasn't read it. It is short, to the point, and really gets at the economic benefit of these resources and the detriment that is being caused by the red tape. So, thank you very much for that.

As we have discussed, the issues of split estate in particular are ones that are crucial for us in Wyoming. I want to thank Deputy Assistant Secretary MacGregor for the work that has already been done. In Wyoming, we have seen a tremendous improvement in the timing, in terms of the APDs. We have seen the backlog be diminished, which, I think, is a good thing.

But I would like to get some sense—I understand that the Department has been supportive of some of these pieces of legislation. You are reviewing Mr. Curtis'. But in the meantime, while we are waiting on legislative action, could you give me a sense of

additional work the Department is going to do and the kind of guidance that you are giving to the local offices, in terms of split estate?

And as you do that, let me ask you to address Mr. Willis' description just now, which I was struck by, which would basically, it seemed like, extend Federal Government permitting authority to basically any activity anywhere that deals with minerals at all, regardless of the ownership of the minerals or the ownership of the surface area.

Ms. MACGREGOR. I am happy to touch on that. And to that point, for awareness, as far as the BLM goes, in total all-time we have approved over 26,000 applications for permit to drill on non-Federal surface land. To give you sort of perspective on our workload, when we are getting through permits, these are also permits that we are processing when there is zero Federal surface disturbance.

But the Department is working on instruction memoranda and guidance within the Bureau of Land Management to further direct and help assist our field directors on the front lines understand the use of statutory categorical exclusions that are tools that have already been provided to us by the U.S. Congress to help expedite a lot of these processes. I can commit to you that that should be out by the close of business today.

We are also working on further memoranda and internal guidance to help clarify where BLM jurisdiction ends and private land begins. And a lot of this is—when we talk about, and others may describe us as circumventing NEPA through a categorical exclusion, I think it is important to remember on site-specific impacts that we are focused on where our jurisdiction is.

A lot of these split estate tracks can be extremely difficult. In some cases we have looked at, I have had our office analyze and we have looked at some parcels where the subsurface estate, we will own less than 2 percent of the minerals, and yet an APD is still required.

So, I think there are some common-sense solutions that we can work on together to make improvements to that process.

Ms. CHENEY. Thank you. In terms of the guidance that you mentioned that is coming out by close of business today, as you know from time here in this Committee and now time in the executive branch, we really did see during the last administration an effort not to grant categorical exclusions that were, in many ways, clearly justifiable by the law. I think it is one of the things that—one of the pieces of legislation Mr. Pearce is putting forward does, in terms of making clear that those shall be granted.

Is it your view that the guidance that is being issued today will be as strong an admonition in favor of abiding by existing law, as we saw for 8 years, in terms of, frankly, ignoring the law in order to stop the development of our fossil fuels?

Ms. MACGREGOR. Absolutely. And it is important to decipher—there is an important distinction between statute-driven categorical exclusions and those that are promulgated under regulations by CEQ. Those are statute-provided categorical exclusions that direct us how to use them. They are for our use by the U.S. Congress. It is the law of the land.

Ms. CHENEY. Thank you very much.

I yield back, Mr. Chairman.

Dr. GOSAR. I thank the gentlewoman. The gentleman from Florida, Mr. Soto, is recognized for 5 minutes.

Mr. SOTO. Thank you, Chairman. New Mexico recently approved permits that do not require oil and gas wells to check for leaks and methane or other pollutants.

Governor Martinez, does New Mexico think methane is harmful to its residents?

Governor MARTINEZ. Certainly there is a measure of making sure that it is not harmful, flaring, et cetera, taking place. We are not doing it in an irresponsible way because we do think that in the production of the oil and gas in our state, the producers live there and understand the damage or danger that any kind of pollutant is also affecting their families.

Therefore, that is why I believe very strongly that they protect the land in which they are drilling. And therefore, the methane that may be produced is minimized as much as possible.

However, it is a product that does come from the production of oil and gas, and I think that making sure that it is minimized as much as possible is of importance to them.

Mr. SOTO. Is this new methane leakage rule the reason why it only takes 10 days now to get a permit in New Mexico?

Governor MARTINEZ. No. Actually, when I took office there were boxes and boxes and boxes of permits being requested by the oil and gas industry of the state government, and they were just not being addressed at all. And one way to destroy an industry is to not give them a response at all, not an approval or a denial.

So, we attacked those permits, and did them in a responsible way, gave a response, and then gave them the answers—

Mr. SOTO. Thank you, Governor. Excuse me, my time is limited. New Mexico's leaking methane law—according to Mr. Pearce's bill, if the Federal permits for the land, if the land is less than 50 percent owned, there will no longer be a Federal permit.

Deputy Assistant Secretary MacGregor, would the new methane leakage law in New Mexico apply to these Federal lands, if Mr. Pearce's bill is passed?

Ms. MACGREGOR. Thank you for that question. That new regulation is not final yet.

Mr. SOTO. I am not talking about the Federal regulation. What Mr. Pearce's bill would say is that there would be no requirement of Federal permit if there was less than 50 percent of the land owned by the Feds. So, would it then kick to the New Mexico rule in those cases, if Mr. Pearce's bill is passed?

Ms. MACGREGOR. I believe, as is the case today in most of the western lands and western states, there are two—there is a Federal APD for anything touching Federal minerals, and there is also a state APD.

States, in many cases, work under the auspices of the Clean Air Act and the Clean Water Act to enforce many of those provisions, which are not directed to us to enforce.

When it comes to issuing the APD, I believe how it would work under Congressman Pearce's bill would be that an APD at the state level adhering to state laws and then, of course, adhering to the

Clean Water Act and Clean Air Act, would be transmitted to the Department of the Interior, to the BLM, and we would take that as accounting for—

Mr. SOTO. Thank you.

Studies show that New Mexico is losing between \$182 million to \$244 million in lost methane a year. Governor, are those methane losses factored into this \$700 million in lost revenue?

And are environmental clean-up costs and health care costs from New Mexicans breathing polluted air factored into the lost revenue that we are talking about here today?

Governor MARTINEZ. If I may, I will defer to Secretary McQueen, please.

Mr. MCQUEEN. Representative, those numbers are based on a number of assumptions that probably don't hold up to the test.

In New Mexico, gas is sold at the wellhead.

Mr. SOTO. OK, and so I understand, since I have limited time, you dispute those numbers.

Last, NASA in 2014 discovered a 2,500-square-mile methane hot spot over the Four Corners region of New Mexico. Does New Mexico have an obligation to states like Florida, who, because of climate change, face severe weather and natural disasters in rising seas? Is there not an obligation for your state to care about my state and others?

I will leave that to the Governor for my remaining time.

Governor MARTINEZ. I think every state certainly should be very interested and care about their environment, their state in which they live, work, raise their children, and employ others. I strongly believe that we are very responsible. We have taken measures.

The technology that this industry has done and invested in to make matters better is far better than any other industry I have seen, because it interests them because they live there, and they want to make a better product and make it safer for them to live there.

I do not see them skimping and making sure that their ability to drill is in any way, that they are not turning their money around re-investing in how do they do it better, and leave a smaller imprint or footprint on a land.

So, I am very supportive of this agency, not just because of the revenues, but also because it is something that makes us independent, as a state and as a country, for the fuel that we have in our state, great minerals, and that exist in one single state that we would love to be a part of for our national security.

Dr. GOSAR. I thank the gentleman. His time has expired.

The gentleman from Utah is recognized for his 5 minutes.

Mr. CURTIS. Thank you, Mr. Chairman and Mr. Ranking Member. And special thanks to our witnesses, every time we do this, I really appreciate your willingness to travel.

Mr. Willis, you come from my district, and welcome. It is nice to have you here, as well. I think your very presence demonstrates the difficulty of these issues, and I appreciate your messages today.

I would like to direct my comments to Mr. Baza.

I appreciate you coming from the district, as well. I have been thinking about your testimony and this gap in time between—I think you said 12 to 18 months it can take to go through the

Federal process, and the state of Utah is doing it in 30 to 90 days. I would like you to articulate a little bit about the differences in the processes, what some may say is missing from that process, if anything. And why are you able to do it in such a reduced amount of time?

Mr. BAZA. Mr. Curtis and members of the Committee, I do believe that I am very expert on the way the state of Utah does business. I am less expert on how the BLM does business.

Mr. CURTIS. OK, fair enough.

Mr. BAZA. To make that comparison may be somewhat unfair. But I think if you looked at our process and what we accomplish in 30 to 90 days, it is very environmentally sensitive. We have people out on the ground who live and work in those areas that are actually inspecting those wells prior to drilling to ensure that the environmental impacts and the land use impacts are minimized for every well that is drilled.

And we take great pride in that process, and we don't want to shortcut any of it for the citizens of Utah. I do believe that if we were to model some of what we do at the BLM's level, there could be some time frames that could be shortened.

Mr. CURTIS. You make a good point, and I don't want to put words in your mouth, so I will let you decide if you agree with me on this. A lot of times in Utah we feel like we actually do care about the land, and actually better sometimes than those far away. And I am assuming you would agree with the fact that those in Utah who are doing this permitting in 30 to 90 days do care about the environment and want to make sure it is done well.

Mr. BAZA. Absolutely. We live and work in those areas, and we want them to be as pristine as possible.

Mr. CURTIS. We have heard a little bit about New Mexico and the impact specifically in New Mexico. Are you familiar enough with the delays and the impact in Utah, and how that is impacting Utah?

Mr. BAZA. Not specifically, but I certainly could go find some information and get back to you very quickly.

Economic development is a very touchy thing in Utah. We don't have the number of rigs operating in Utah that are going on in New Mexico, although we are seeing more production from state and private lands in the last few years than we have ever seen. Much of that is due to new horizontal drilling technology, which is catching on like wildfire.

We see a great window of opportunity into the future of developing more resources like that, but we have to be careful that the impedance that comes from the Federal side doesn't dissuade operators from making those investments in Utah.

Mr. CURTIS. Is it accurate to say that the rural part of Utah is disproportionately impacted by this, most of this is happening in rural Utah?

Mr. BAZA. Yes, correct. There is no real drilling going on in the urbanized areas, it is all in the rural communities.

Mr. CURTIS. Yes, where we are struggling.

The state of Utah, it has been mentioned here, this letter, with five other states sent a letter to Secretary Zinke advocating for legislation that is actually pretty similar to this draft legislation.

Are you familiar with that letter? Can you tell us a little bit about why the letter was sent, and how it is felt this will impact Utah?

Mr. BAZA. Yes, I am familiar with that letter, and it is part of my written testimony I have submitted. The letter is actually very detailed, in terms of what procedures should be followed. I think your bill and the other bills that are coming out of the Committee today are much more broadly based, in terms of what can be done to improve the processes.

In the bill that you proposed, I believe it is wise to look at triaging APDs that come into the Federal Government. Not all Federal lands are created equal. And I think that we could look at what are the lower-risk areas that could be developed much quicker than devote our time to the more sensitive areas and those APDs that will be more complex.

Mr. CURTIS. Thank you. I appreciate all of you. I am out of time, and I will yield, Mr. Chairman.

Dr. GOSAR. I thank the gentleman from Utah. The gentleman from Arizona, Mr. Grijalva, is recognized for 5 minutes.

Mr. GRIJALVA. Thank you, Chairman Gosar, I appreciate it. And thank you to the witnesses.

Secretary MacGregor, back to the line of questioning that Ranking Member Lowenthal started having to do with the unused drilling permits, much of that has been explored already.

My question, or maybe it is a request, of those permits, do we have a company-by-company, individual-by-individual breakdown of the holders of those permits?

Ms. MACGREGOR. I don't believe I have that information.

Mr. GRIJALVA. Is that information available?

Ms. MACGREGOR. It is not readily available. I think we could try to get it.

Mr. GRIJALVA. The reason I ask is about the redundancy of it, that someone after that 4-year period, the 2, and then the automatic 2, then after 4 years are we seeing the same companies, same names being consistently the ones that are renewing permits over and over again that have already been permitted to drill?

Ms. MACGREGOR. That is a good question, and I have spent some time in Wyoming talking to our reservoir management team on that. Because I think what companies are starting to do is apply for a lot of these APDs in tranches, and planning for a potential long waiting period for the APD to be filed. So, they might file a bunch of APDs expecting that it might take a couple of years.

Mr. GRIJALVA. OK.

Ms. MACGREGOR. In some cases, I think we have some that have been pending for over 5 years when I started in January.

Mr. GRIJALVA. I am talking specifically about those that are unused that have the drilling permit, per se.

But I ask that because other motivations might be market motivations, speculation, holding on to something.

Do you support any kind of concept now or in the future about using them or losing them, and allowing the opportunity to be extended to others who might more readily be prepared to utilize that?

Ms. MACGREGOR. I think that is an interesting concept. It is pretty much how we operate right now.

When an APD is issued, a company has 2 years. It can be renewed once, and then you are done and we keep all of the revenue associated with the filing of that APD. And that is why, in 2017, we still have \$5 million that went to the BLM and to the Treasury from expired APDs.

Mr. GRIJALVA. OK, but you see my point? Once knowing who they are and what is the lack of—I can't find the right word—recidivism of the people applying over and over again for these, it would be good to be able to make some sort of analysis about that, and possibly promote a use it or lose it concept that hasn't been promoted as readily as it should.

Anyway, Secretary McQueen, part of the discussion today is NEPA, public participation, fee for protest. What is the process in New Mexico regarding public participation? Resembling NEPA? Something different? If you could, just maybe outline how the public and New Mexico gets involved in the decision making when you are issuing a permit or siting something.

Mr. MCQUEEN. In New Mexico, most of the permits that would fall under our jurisdiction are either state or private leases. And the state land office in New Mexico is responsible for overseeing the environmental review of state leases.

Mr. GRIJALVA. At what point does the public interject itself into that process? When do they have the right to know about what is going on in New Mexico?

Mr. MCQUEEN. All of our regulatory proceedings in New Mexico are open for public comment.

Mr. GRIJALVA. And there is a protest period, and then there are comment periods, and all that?

Mr. MCQUEEN. There is an opportunity to make public comment through our hearing process. Yes, sir.

Mr. GRIJALVA. And, again, for Mr. McQueen, for extraction of let's say minerals on state land, does New Mexico collect royalties on that?

Mr. MCQUEEN. Representative, yes, they do.

Mr. GRIJALVA. What is it?

Mr. MCQUEEN. The oil and gas royalties are set by statute in New Mexico, and those have changed through the course of time. But they varied between 12.5 and 20 percent royalties on state lands.

Mr. GRIJALVA. Since we hear a lot about the states leading by example, do you feel that the Federal Government should also be charging some form of royalty on all the minerals that are extracted from its public lands?

Mr. MCQUEEN. Representative, I believe the Federal Government is receiving royalty on oil and gas that is being produced.

Mr. GRIJALVA. No, I am talking about mineral extraction.

Dr. GOSAR. The gentleman's time is expired.

Mr. GRIJALVA. Thank you.

Dr. GOSAR. I thank the gentleman. The gentleman from New Mexico, Mr. Luján, is recognized for 5 minutes.

Mr. LUJÁN. Chairman Gosar, Ranking Member Lowenthal, thank you for the indulgence of allowing me to sit on the Committee

today, even though I am not a member of the Committee, at least not a current member of the Committee.

Mr. Gosar, it was an honor to serve with you and Mr. Grijalva and Mr. Lowenthal before.

Governor Martinez, while I know we are here on permitting, I am going to take this opportunity to ask a different question at the top. And I want to thank you for going down, as you have done with other natural disasters in New Mexico, to see the impacted area on Saturday. And I know that your team has been on the ground there with all the firefighters, over 36,000 acres that have been burned in and around Cimarron, northern New Mexico, Eagles Nest, Ute Park, into Colfax County.

What I wanted to ask, Governor, is does the state of New Mexico have the resources it needs to address this fire? And do you expect to make any additional requests of FEMA or the Federal Government?

Governor MARTINEZ. Thank you, Mr. Chairman and Representative Luján. Yes, the state does have the resources, and we do receive those resources and have asked for FEMA requests, as well.

We have about 500 firefighters fighting this fire. It will continue to burn for probably another 1½ to 2 weeks. But we are trying to and have been successful in making sure that the community of Cimarron, Ute Park are also protected, we have not lost life and/or property, except for outhouse type of buildings, where people do not live. So, we do feel strongly that our budget is healthy and is able to participate in the percentage that we put in when we make those FEMA requests.

Mr. LUJÁN. I appreciate that, Governor. And I know we were all pleased when FEMA accepted the state of New Mexico's request for the fire management assistance grants, as well.

But the reason I wanted to ask that question is I know I have visited with many of my colleagues, and we all stand ready to make sure we are working together. But thank you for your leadership in that effort.

On the permitting side, Secretary McQueen, I am going to push back a little bit. Congressman Grijalva asked some questions about public notification and comment procedures from the state of New Mexico. What sort of public notification and comment procedures does the state have when it receives drilling permit applications?

Mr. MCQUEEN. Representative Luján, our public comment period related to oil and gas operations largely fall within the LCD hearing process. So, for a typical oil and gas permit that is applied in southeastern New Mexico, typically there wouldn't be a public comment in that.

Mr. LUJÁN. If I may, I want to seize on that. My research says there is basically none. And I think that the notion that there can be public comment when there are no requirements is one of the challenges that we have that we need to correct.

We hear a lot about how much more quickly states can process drilling permits, but I think that we also have to acknowledge that there should be a process that allows the public to comment, as well. And I think that is something that needs to be addressed in New Mexico.

Governor Martinez, in responding to Congressman Soto's line of questioning around methane, what requirements does the state of New Mexico have in place, in your words, to minimize methane exposure and waste?

Governor MARTINEZ. It is my understanding, Mr. Chairman and Representative Luján, that the flaring is one of those issues, and that they are trying to recapture, and using technology through the industry to make sure that that is being used in a different way, and so that we are not having those issues.

Mr. LUJÁN. Since my time is going to expire, you said try to capture. Is there a requirement in New Mexico for capturing of methane?

Governor MARTINEZ. No, but the responsibility—well, I—

Mr. LUJÁN. No is the correct answer. I mean I appreciate that. And Secretary—

Governor MARTINEZ. I don't know that it is the correct answer, and I would like Mr. McQueen to—

Mr. LUJÁN. Well, Secretary McQueen, if I could, you also pushed back on the basis of the numbers that Darren Soto presented to you, the 570,000 tons of methane each year due to intentional emissions, unintentional leaks and flaring of gas, \$182 to \$244 million. If those numbers are incorrect, what are your numbers?

Mr. MCQUEEN. The state is currently venting about .1 percent of its total gas production and about 1.2 percent of its total gas production is being flared.

Mr. LUJÁN. How much is that costing the state?

Mr. MCQUEEN. If you compare those numbers to peer oil and gas states, you will find that those are very comparable numbers.

Mr. LUJÁN. How much money is New Mexico losing because we don't have any requirements to capture this?

Mr. MCQUEEN. Well, natural gas is selling for \$1.60, \$1.70 an—

Mr. LUJÁN. Mr. Chairman, as my time expires here, I think that those are some questions I will work with the Committee to submit.

We need to get some answers here, because we cannot just push back on estimates that are being put forth that there is not a response associated with what has been calculated.

It has been admitted that this methane is not being captured in New Mexico, it is being wasted, and we know that there is revenue being lost. We need to maximize this. In New Mexico, every dollar counts.

So, Mr. Chairman, again I thank you for the indulgence. I will work with you and the Committee to see if we can get some answers to these questions, as well.

Dr. GOSAR. I thank the gentleman.

Mr. LUJÁN. I thank you so much for being here, as well.

Dr. GOSAR. Thank you. I am going to recognize myself to go last.

First of all, I need to clear up a couple things because there is some confusion as to what these bills actually do and what type of drilling operations actually qualify for the permitting mechanisms that we create under these bills.

Mr. Willis states in his testimony that under the new NPD process, "a notice may place a well on a national historical trail or

in especially sensitive and critical wildlife habitat or a community water source.” I want to make it perfectly clear that these operations are not what we are talking about here in this language. We are talking about drilling activities that pose no significant effects to human environment, threatened or endangered species, or cultural or historical properties. The bill makes this perfectly clear.

The Secretary also has the ability to object to an NPD based on these grounds, and require consultation under the ESA or NHPA to remedy such concerns with additional conditions if so needed. We are not exempting anything under NEPA. These drilling operations are ones for which the BLM has already conducted the study under the NEPA, and are in areas where the drilling has actually occurred, and they are eligible for a categorical exclusion, or a study is produced to show that there are no such impacts.

Once again, Mr. Willis, please make sure that you understand. You have been with the BLM. You should be able to read this and understand that. So, get the facts straight.

Secretary MacGregor, under the bills we have here before you today, it would allow the Department of the Interior to recover the cost of processing leases through the assessment of administrative processing fees. How many lease sales are protested? And can you describe the type of objections these protests are making in the BLM lease sales?

Ms. MACGREGOR. Absolutely. To date, I mean in Fiscal Year 2017, nearly 88 percent of all leases were protested. And I think it is important to decipher a protest period is not the public comment period. On multiple occasions leading up to a Federal lease sale, there are several different opportunities for the public to share their opinion, and we want that. In many cases, we have published our notice of potential lease sale, put the acreage out, and then, when we conduct the actual lease sale, sometimes 5 to 10 percent of the acreage has already been deferred because of the public comments that we have received. And we really try to get ahead of that before the lease sale is actually conducted.

The protest period comes after the lease sale has been conducted. And again, that, in some cases, has significantly delayed our ability to adhere to our revenue-sharing obligations under the Mineral Leasing Act and provide states like New Mexico, in the case of 2016, waiting over 7 months to get a \$70 million payment.

But, again, our staff, when we discuss this concept that you are sharing with us in the form of a draft bill, we have looked at some protests where, in fact, there have been copied-and-pasted sections where a protest has been filed in Wyoming and identically filed in the state of Colorado or New Mexico. And if the intent of some of these protests is to stop the lease sale from occurring, that is an abuse of what protests are supposed to be. We would like to focus on protests where it is a rancher who has a serious concern with something going on in proximity to his lands.

But if it is an attempt through 1,500 pages of our review—and we have letters outstanding to Mr. Lowenthal and others—to get through these, and then be able to make a payment and have our staff spend hours to do that, that is a little bit different. And we do charge, I mean there are FOIA fees. We have had a multitude of FOIAs, and that hasn’t prevented anyone from filing FOIAs with

the Department, God knows, because we have quite a few right now.

We respect public comment, we absolutely want to ensure that. But when it gets abused and over 88 percent of our leases are protested, I think we have a little bit of an issue developing.

Dr. GOSAR. Can you give me a range of time in which those challenges take to resolve?

Ms. MACGREGOR. Well, this is just a bad example, because our team has to go through and read every single page. I mean this is printed double-sided so it could actually fit on the desk, but there are others that won't take as long. But it really depends on how many and how many pages we have. There are some good reports in there. And making sure that our comments address every issue that is raised in that protest tends to be one of the most consuming aspects of a protest.

Dr. GOSAR. Governor Martinez, when you have such a delay in the issuance of a lease sale, what does that mean to the state of New Mexico?

Governor MARTINEZ. It is one of our largest industries. We rely heavily on the Federal Government, because we have four military bases and three national labs, so many coming from the Federal Government. That is one of our largest industries, and all of these subcontracts to that.

And the second one is our oil and gas industry, which employs 100,000 people and is a revenue generator of, 35 percent of our general budget comes from the oil and gas industry.

We also have a \$23 billion permanent fund that, should oil and gas ever be depleted in the state of New Mexico, that permanent fund then will be the replacing dollars for building those schools, \$1,800 and \$19 million every year from the permanent fund, and the revenue that is received from those investments goes straight into the budget, as well.

So, when we do not have timely, responsible ways of requesting permits, those kinds of dollars for a \$6 billion budget is detrimental.

Dr. GOSAR. One last question, Ms. MacGregor. In regards to the methane rule, what is the biggest impediment in regards to methane from the producers?

Ms. MACGREGOR. Well, methane is natural gas. It is a commodity. So, I do believe producers want to take every effort to capture that commodity and bring it to market to make money off of it.

In some cases, producers will have to vent or flare for emergency purposes, or for completion, or there are a multitude of reasons that are unavailable. But there are other instances, if they have to do it on an avoidable basis under current regulations, then we charge them revenue. We charge them a royalty.

Dr. GOSAR. But you get my point. It is a commodity, right?

Ms. MACGREGOR. Right.

Dr. GOSAR. And it is a sellable commodity.

Let me ask you another question. Have leases gone up? Has more drilling occurred in the United States?

Ms. MACGREGOR. Yes.

Dr. GOSAR. Has methane gone up, the release of methane in the environment gone up, or run down?

Ms. MACGREGOR. The last report I read from the EPA had, I believe, said it has gone down.

Dr. GOSAR. Considerably. Considerably, because of industry. So, why would you want to actually impugn the industry who is trying to capture it for criminy sakes? I don't get it.

Well, anyway, you satisfied my curiosity, so we will have to leave it with that.

I want to thank the witnesses for their valuable testimony and the Members for their questions. The members of the Committee may have some additional questions for the witnesses, and we ask that you respond to these in writing.

Under Committee Rule 3(o), members of the Committee may submit witness questions within 3 business days following the hearing by 5:00 p.m., and the hearing record will be held open for 10 business days for their responses.

If there is no further business, without objection, the Committee is adjourned.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned.]

